

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/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 part III of ch. 475, F.S., the "Commercial Real
8 Estate Sales Commission Lien Act"; providing definitions;
9 specifying conditions under which a broker is entitled to a
10 lien upon the owner's net proceeds from the disposition of
11 commercial real estate for any commission earned by the
12 broker under a brokerage agreement; providing that the lien
13 cannot be assigned, enforced, or waived by anyone other
14 than the broker; requiring disclosure; providing for the
15 contents of the commission notice and delivery to certain
16 parties; providing a form for the commission notice;
17 providing that a lien may not be enforced if the notice is
18 not delivered to certain parties; providing that the
19 commission notice may be recorded; providing for expiration
20 and extension under certain conditions; providing for
21 release of the commission notice under certain conditions;
22 providing the duties of the closing agent; requiring the
23 closing agent to reserve an owner's proceeds under certain

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24 | conditions; providing for the release of proceeds under
25 | certain conditions; requiring deduction of certain costs
26 | from the proceeds; providing for interpleader or other
27 | legal proceedings sought by a closing agent to adjudicate
28 | certain rights; providing for the deposit of reserved
29 | proceeds in a court registry; providing for the discharge
30 | of the closing agent from further liability; providing for
31 | a civil action if a dispute arises concerning the proceeds;
32 | providing that the prevailing party may recover certain
33 | fees and costs incurred in a civil action; establishing the
34 | priority of a recorded commission notice; providing for the
35 | service of notice; providing that a buyer's broker is not
36 | entitled to a lien; providing certain conditions under
37 | which a buyer's broker may seek payment of a commission;
38 | creating part IV of ch. 475, F.S., the "Commercial Real
39 | Estate Leasing Commission Lien Act"; providing definitions;
40 | providing conditions under which a broker may place a lien
41 | upon an owner's interest in commercial real estate for any
42 | commission earned under a brokerage agreement with respect
43 | to a lease of commercial real estate; providing that the
44 | lien cannot be assigned, enforced, or waived by anyone
45 | other than the broker; requiring disclosure; providing for
46 | the contents of the lien notice; providing a form for the
47 | lien notice; providing that the lien notice may be
48 | recorded; providing that a lien may not be enforced if the
49 | broker fails to record the notice; providing for
50 | effectiveness of a recorded lien notice; providing for
51 | release of the lien notice under certain conditions;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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52 providing for expiration and extension under certain
 53 conditions; providing for foreclosure of a recorded lien
 54 under certain conditions; providing a form; providing for a
 55 civil action if a dispute arises concerning the proceeds;
 56 providing that the prevailing party may recover certain
 57 fees and costs incurred in a civil action; providing
 58 procedures to transfer a lien to a security; providing that
 59 the clerk of court may collect a service charge; amending
 60 s. 475.42, F.S.; providing that a broker may place a lien
 61 when allowed by law; providing an effective date.
 62

63 Be it Enacted by the Legislature of the State of Florida:
 64

65 Section 1. Part III of chapter 475, Florida Statutes,
 66 consisting of sections 475.700, 475.701, 475.703, 475.705,
 67 475.707, 475.709, 475.711, 475.713, 475.715, 475.717, and
 68 475.719, is created to read:

69 475.700 Popular name.--Sections 475.700-475.719 may be
 70 cited as the "Commercial Real Estate Sales Commission Lien Act."

71 475.701 Definitions.--As used in this part:

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

73 (2) "Brokerage agreement" means a written contract entered
 74 into on or after the effective date of this act between an owner
 75 of commercial real estate and a broker that obligates the owner
 76 to pay a commission to the broker for licensed services provided
 77 by the broker relating to the sale or disposition of the
 78 commercial real estate as specified in the contract.

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79 (3) "Closing" means the delivery, exchange, and release of
 80 documents and funds for the completion of a transaction for the
 81 disposition of commercial real estate.

82 (4) "Closing agent" means the person who receives
 83 documents and funds for recording and disbursement in closing a
 84 transaction for the disposition of commercial real estate.

85 (5) "Commercial real estate" means a fee simple interest
 86 or other possessory estate in real property, except an interest
 87 in real property that is:

88 (a) Improved with one single-family residential unit or
 89 one multifamily structure containing one to four residential
 90 units;

91 (b) Unimproved and the maximum permitted development is
 92 one to four residential units under any restrictive covenants,
 93 zoning regulations, or comprehensive plan applicable to that
 94 real property; or

95 (c) Improved with single-family residential units such as
 96 condominiums, townhouses, timeshares, mobile homes, or houses in
 97 a subdivision that may be legally sold, leased, or otherwise
 98 conveyed on a unit-by-unit basis, regardless of whether these
 99 units may be a part of a larger building or parcel containing
 100 more than four residential units.

101 (6) "Commission" means any fee or other compensation that
 102 an owner agrees to pay a broker for licensed services as
 103 specified in a brokerage agreement.

104 (7) "Commission notice" means the written notice claiming
 105 a commission made by a broker under s. 475.705.

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106 (8) "Days" means calendar days, but if a period would end
 107 on a day other than a business day, then the last day of that
 108 period shall instead be the next business day.

109 (9) "Disposition" means a voluntary conveyance or transfer
 110 of the title to or other ownership interest in any commercial
 111 real estate specified in a brokerage agreement. A disposition
 112 does not include a transfer pursuant to a foreclosure sale and
 113 does not include a lease.

114 (10) "Disputed reserved proceeds" means the portion of the
 115 owner's net proceeds reserved by a closing agent under s.
 116 475.709 that the owner disputes the broker's right to receive
 117 such reserved proceeds under s. 475.709(5).

118 (11) "Owner" means a person that is vested with fee simple
 119 title or a possessory estate in commercial real estate.

120 (12) "Owner's net proceeds" means the gross sales proceeds
 121 that the owner is entitled to receive from the disposition of
 122 any commercial real estate specified in a brokerage agreement,
 123 less the following:

124 (a) Any money that is required to pay any encumbrance,
 125 claim, or lien that has priority over the recorded commission
 126 notice as provided in s. 475.715 other than an encumbrance,
 127 claim, or lien that the buyer of the commercial real estate
 128 authorizes to remain after the disposition.

129 (b) Any costs incurred by the owner to close the
 130 disposition, including, but not limited to, real estate transfer
 131 tax, title insurance premiums, ad valorem taxes and assessments,
 132 and escrow fees payable by the owner pursuant to an agreement
 133 with the buyer.

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134 (13) "Real property" means one or more parcels or tracts
 135 of land located in this state, including any appurtenances and
 136 improvements.

137 475.703 Broker's lien for sales commission.--

138 (1) A broker has a lien upon the owner's net proceeds from
 139 the disposition of commercial real estate for any commission
 140 earned by the broker with respect to that disposition pursuant
 141 to a brokerage agreement. The lien upon the owner's net proceeds
 142 pursuant to this part for a broker's commission is a lien upon
 143 personal property, attaches to the owner's net proceeds only,
 144 and does not attach to any interest in real property.

145 (2) For purposes of this part, a commission is earned on
 146 the earlier of the date that:

147 (a) An event occurs under the brokerage agreement that
 148 defines when the commission is earned; or

149 (b) The owner enters into a contract for the disposition
 150 of all or part of the commercial real estate specified in the
 151 brokerage agreement, provided that a commission would be payable
 152 to the broker pursuant to the brokerage agreement if the
 153 disposition occurs under that contract.

154 (3) For the purposes of this part, a commission is payable
 155 at the time provided in the brokerage agreement. If payment of
 156 the commission is conditioned on the occurrence of an event and
 157 that event does not occur, a broker may not enforce a lien for
 158 that commission under this part.

159 (4) A broker's lien for commission arising under this
 160 part:

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161 (a) Belongs to the broker named in the brokerage agreement
 162 and not to an employee or independent contractor of the broker.

163 (b) Cannot be assigned voluntarily or by operation of law
 164 and may not be enforced by a person other than the broker.

165 (c) Cannot be waived before the commission is earned.

166 (d) Cannot be waived by any person other than the broker,
 167 regardless of whether that person may execute and bind the
 168 broker to a brokerage agreement.

169 (5) A broker shall disclose to the owner at or before the
 170 time the owner executes the brokerage agreement that this part
 171 creates lien rights for a commission earned by the broker that
 172 are not waivable before the commission is earned by the broker.
 173 A broker may not enforce a lien under this part for a commission
 174 earned under a brokerage agreement for which the disclosure
 175 required by this subsection was not made. A disclosure in
 176 substantially the following form shall be sufficient: "The
 177 Florida Commercial Real Estate Sales Commission Lien Act
 178 provides that when a broker has earned a commission by
 179 performing licensed services under a brokerage agreement with
 180 you, the broker may claim a lien against your net sales proceeds
 181 for the broker's commission. The broker's lien rights under the
 182 act cannot be waived before the commission is earned."

183 475.705 Contents of commission notice; delivery to owner
 184 and closing agent.--

185 (1) A commission notice made by a broker with respect to a
 186 commission claimed under this part shall be in writing, shall be
 187 signed and sworn to or affirmed by the broker under penalty of
 188 perjury before a notary public, and shall include the following:

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189 (a) The name of the owner of the commercial real estate
 190 who is obligated to pay the claimed commission.

191 (b) The legal description of the commercial real estate.

192 (c) The name, mailing address, telephone number, and
 193 license number of the broker.

194 (d) The effective date of the brokerage agreement.

195 (e) The amount of the commission claimed by the broker,
 196 which may be stated in a dollar amount or may be stated in the
 197 form of a formula determining the amount, such as a percentage
 198 of the sales price.

199 (f) A statement under penalty of perjury that the broker
 200 has read the commission notice, knows its contents, believes the
 201 same to be true and correct, and makes the commission claim
 202 pursuant to the brokerage agreement described in the notice.

203 (g) A statement that the commission notice or a copy
 204 thereof has been delivered to the owner and that the commission
 205 notice may be recorded in the public records of the county or
 206 counties where the commercial real estate is located.

207 (h) A statement that this part provides that if the owner
 208 disputes the claimed commission the owner shall notify the
 209 closing agent of such dispute not later than 5 days after the
 210 closing, or the owner will be deemed to have confirmed the
 211 commission and this part will require the closing agent to pay
 212 the commission to the broker from the owner's net proceeds from
 213 the disposition of the commercial real estate.

214 (2) A commission notice in substantially the following
 215 form shall be sufficient for purposes of subsection (1):

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BROKER'S COMMISSION NOTICE UNDER

FLORIDA COMMERCIAL REAL ESTATE SALES COMMISSION LIEN ACT

217
218
219
220 Notice is hereby given pursuant to the Florida Commercial Real
221 Estate Sales Commission Lien Act, part III of chapter 475,
222 Florida Statutes (the "act"), that the undersigned real estate
223 broker is entitled to receive a sales commission in the amount
224 set forth below from the owner named below pursuant to the terms
225 of a written brokerage commission agreement regarding the
226 commercial real estate described below, and the undersigned
227 broker claims a lien under the act against the owner's net
228 proceeds from the disposition of the commercial real estate. The
229 act and this commission notice do not create a lien against the
230 commercial real estate itself, but only against the owner's net
231 proceeds.

232
233 1. Name of the owner who is obligated to pay the commission:

234 _____

235 2. Legal description of the commercial real estate:

236 _____

237 3. Name, mailing address, telephone number, and Florida broker
238 license number of the undersigned broker:

239 _____

240 _____

241 _____

242 4. Effective date of the written brokerage commission agreement
243 between the owner and the broker under which the commission is
244 or will be payable: _____, _____

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245 5. Amount of commission claimed by the undersigned broker:
 246 \$ _____, or
 247 _____ percent of sales price, or
 248 [specify other formula for determination of commission amount]:
 249 _____.

250 6. The undersigned broker, under penalty of perjury, hereby
 251 swears or affirms that the undersigned broker has read this
 252 commission notice, knows its contents and believes the same to
 253 be true and correct, and that the undersigned broker is making
 254 this commission claim pursuant to the written brokerage
 255 commission agreement described in this commission notice.

256 7. The undersigned broker confirms that this commission notice
 257 or a copy thereof has been delivered to the owner.

258
 259 Signed: _____(broker)_____

260
 261 Signed and sworn to or affirmed under penalty of perjury before
 262 me, a notary public, this _____ day of _____, _____, by
 263 _____

264
 265 Signed: _____(notary public)_____

266 WARNING TO OWNER: The act provides that if you dispute the
 267 commission claimed in this commission notice, you must notify
 268 the closing agent of the dispute no later than 5 days after the
 269 closing. If you fail to notify the closing agent before that
 270 date that you dispute the commission, you will be deemed to have
 271 confirmed the commission and the act will require the closing

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272 agent to pay the commission to the broker from your net proceeds
 273 from the disposition of the commercial real estate.

274
 275 This commission notice may be recorded in the public records of
 276 the county or counties where the commercial real estate is
 277 located.

278 (3) Subject to subsection (4), if a broker wishes to
 279 enforce a lien for a commission under this part, the broker
 280 shall, within 30 days after a commission is earned by the broker
 281 pursuant to s. 475.703(2) and at least 1 day before the closing,
 282 deliver a copy of the commission notice to:

283 (a) The owner of the commercial real estate specified in
 284 the brokerage agreement.

285 (b) The closing agent designated to close the transaction
 286 for the disposition of the commercial real estate, if the broker
 287 then knows the identity of the closing agent. If the identity of
 288 the closing agent thereafter becomes known to the broker, then
 289 the broker shall deliver a copy of the commission notice to the
 290 closing agent within 3 days after the broker acquires such
 291 knowledge and at least 1 day before the closing.

292 (4) Except as provided in this subsection, a broker who
 293 fails to deliver a copy of a commission notice as required under
 294 subsection (3) within the period specified therein may not
 295 enforce a lien for the commission under this part. If a broker
 296 fails to deliver a copy of the commission notice within said
 297 period solely because the owner entered into a contract for the
 298 disposition of the commercial real estate without the knowledge

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299 of the broker, the broker may enforce a lien for the commission
 300 under this part if:

301 (a) The copy of the commission notice is delivered to the
 302 owner and the closing agent before the closing agent disburses
 303 the owner's net proceeds to the owner.

304 (b) The broker executes and delivers to the closing agent
 305 a sworn affidavit stating that the copy of the commission notice
 306 was not delivered within the time period specified in subsection
 307 (3) solely because the owner entered into a contract for the
 308 disposition of the commercial real estate without the knowledge
 309 of the broker.

310
 311 Notwithstanding the provisions of this subsection, a broker who
 312 fails to deliver a copy of a commission notice to the owner and
 313 the closing agent before the disbursement of the owner's net
 314 proceeds may not enforce a lien for the commission under this
 315 part, and the delivery of a copy of a commission notice after
 316 such disbursement is ineffective under this part.

317 475.707 Recording commission notice; effectiveness.--

318 (1) After a broker delivers the copies of a commission
 319 notice as provided in s. 475.705, the broker may record the
 320 commission notice in the public records maintained by the clerk
 321 of court in the county or counties in which the commercial real
 322 estate is located.

323 (a) Subject to the limitation in paragraph (b), the
 324 broker's lien created by this part against the owner's net
 325 proceeds is perfected by such recording of the commission notice
 326 and takes priority pursuant to this part as of the date of the

327 recording of the commission notice. The priority of the lien
 328 does not relate back to the date of the brokerage agreement.

329 (b) The recording of the commission notice shall not
 330 constitute constructive notice to a closing agent unless the
 331 commission notice has been of record for at least 60 days.

332 (2) A recorded commission notice is effective under this
 333 part only with respect to dispositions made by the owner named
 334 in the commission notice and after the recordation of a deed
 335 from the owner conveying the commercial real estate specified in
 336 the commission notice to a bona fide purchaser for value the
 337 commission notice is ineffective with respect to any subsequent
 338 dispositions of that commercial real estate.

339 (3) A commission notice recorded under this part expires 1
 340 year after the date of recording, unless the brokerage agreement
 341 remains effective after the expiration date of the commission
 342 notice and the broker records an extension notice in the same
 343 public records within the last 60 days before such expiration
 344 date. An extension notice shall refer to the recording
 345 information of the original commission notice, shall state that
 346 the brokerage agreement remains effective, and shall include the
 347 information and be executed in the manner as required by s.
 348 475.705(1) for the original commission notice. A timely recorded
 349 extension notice shall extend the expiration date of the
 350 original recorded commission notice by 1 additional year.
 351 Successive extension notices may be recorded for so long as the
 352 brokerage agreement remains effective between the broker and the
 353 owner. Within 10 days after recording an extension notice the
 354 broker shall deliver a copy thereof to the owner.

355 (4) The delivery or recording of a commission notice or
 356 the enforcement of a commission claim by a broker under this
 357 part does not relieve the owner from the owner's obligation to
 358 close a disposition transaction for any commercial real estate.

359 (5) Whenever a commission notice is recorded and a
 360 condition or event occurs or fails to occur that would preclude
 361 the broker from receiving the claimed commission under the terms
 362 of the brokerage agreement, including the filing of a commission
 363 notice in a manner that does not comply with this part, the
 364 broker shall, within 7 days following demand by the owner,
 365 record a written release of the commission notice in the public
 366 records of the county where the commission notice was recorded.

367 (6) If a broker records a commission notice pursuant to
 368 this section and the claimed commission is paid or the
 369 commission notice is otherwise discharged or satisfied pursuant
 370 to this part, the broker shall, within 7 days after the
 371 commission is paid or the commission notice is otherwise
 372 discharged or satisfied, record a written release of the
 373 commission notice in the public records of the county where the
 374 commission notice was recorded.

375 475.709 Duties of closing agent; reservation of owner's
 376 net proceeds.--

377 (1)(a) The closing agent shall reserve from the owner's
 378 net proceeds an amount equal to the commission claimed by the
 379 broker in the commission notice if, before the closing agent
 380 disburses the owner's net proceeds from the closing of a
 381 disposition of commercial real estate:

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382 1. A commission notice pertaining to the commercial real
 383 estate is delivered to the closing agent in accordance with s.
 384 475.705;

385 2. A commission notice pertaining to the commercial real
 386 estate has been recorded for at least 60 days pursuant to s.
 387 475.707 and has not expired or been released or canceled as
 388 provided in this part; or

389 3. The closing agent has actual knowledge of a commission
 390 notice pertaining to the commercial real estate that has been
 391 recorded pursuant to s. 475.707 and has not expired or been
 392 released or canceled as provided in this part.

393 (b) If the owner's net proceeds are insufficient to pay
 394 the full amount of the claimed commission, the closing agent
 395 shall reserve the entire amount of the owner's net proceeds. The
 396 closing agent shall release the reserved proceeds only in
 397 accordance with the provisions of this part.

398 (2)(a) The closing agent designated to close a transaction
 399 for the disposition of commercial real estate may require the
 400 owner of the commercial real estate to deliver a sworn affidavit
 401 identifying the commercial real estate and disclosing to the
 402 closing agent:

403 1. Whether the owner is a party to any brokerage agreement
 404 under which any broker or brokers may have a right to claim a
 405 commission from the disposition of the commercial real estate.

406 2. The name, mailing address, and telephone number of any
 407 brokers who may have a right to claim a commission, if known to
 408 the owner.

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409 3. The amount of any and all commissions that may be
410 claimed under any brokerage agreement disclosed in the owner's
411 affidavit, to the best of the owner's knowledge and belief.

412 4. Whether the owner confirms or disputes the amount of
413 any commission claimed from the disposition of the commercial
414 real estate as disclosed in the owner's affidavit.

415 (b) If the closing agent receives an affidavit from the
416 owner under this subsection disclosing that any commission may
417 be claimed from the disposition of the commercial real estate,
418 regardless of whether the owner confirms or disputes the
419 commission, the closing agent shall reserve from the owner's net
420 proceeds an amount equal to the total commission amount
421 disclosed by the owner in the affidavit. Upon request by a
422 broker who has a brokerage agreement with the owner covering the
423 commercial real estate identified in the owner's affidavit, the
424 closing agent shall deliver a copy of the affidavit to the
425 broker. If the owner's net proceeds are insufficient to pay the
426 full amount of the commission so disclosed, the closing agent
427 shall reserve the entire amount of the owner's net proceeds. If
428 the owner's affidavit discloses a commission amount that is
429 different from the commission amount required to be reserved
430 under subsection (1), the closing agent shall reserve the
431 greater of the two commission amounts. The closing agent shall
432 release the reserved proceeds only in accordance with the
433 provisions of this part.

434 (3) If the provisions of subsection (1) do not require the
435 closing agent to reserve against the owner's net proceeds on
436 account of a commission notice pertaining to the commercial real

437 estate, and if the closing agent receives an owner's affidavit
 438 pursuant to subsection (2) stating that the owner is not a party
 439 to any brokerage agreement under which any commission may be
 440 claimed from the disposition of the commercial real estate, the
 441 closing agent has no duty under this part to reserve any money
 442 or property for a commission from the owner's net proceeds from
 443 the disposition of the commercial real estate.

444 (4) If the closing agent determines that the owner's net
 445 proceeds from a disposition of commercial real estate are
 446 insufficient to pay the full amount of the commission claimed in
 447 a commission notice or disclosed in an owner's affidavit, the
 448 closing agent shall, within 3 days after making that
 449 determination but no later than the closing of the disposition,
 450 notify the owner and the broker of the determination. The
 451 closing agent's determination that the owner's net proceeds are
 452 insufficient under this part, however, does not relieve the
 453 owner from the owner's contractual obligations under the
 454 brokerage agreement to pay the full commission owing to the
 455 broker.

456 (5) If the owner confirms that a commission is payable to
 457 the broker, at the closing of the disposition of the commercial
 458 real estate the closing agent shall release to the broker the
 459 confirmed amount of the commission from the reserved proceeds. A
 460 settlement statement executed by the owner and showing the
 461 payment of a commission to the broker is confirmation by the
 462 owner of the commission amount shown on the settlement
 463 statement. If the owner disputes the broker's right to receive
 464 all or any portion of the claimed commission, the closing agent

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465 shall release to the broker from the reserved proceeds only the
466 undisputed portion of the commission, if any. Until the rights
467 of the owner and the broker with respect to the disputed
468 reserved proceeds are determined pursuant to s. 475.711 or s.
469 475.713 or the owner and the broker otherwise agree in writing,
470 the closing agent shall not release the disputed reserved
471 proceeds to any person other than to deposit the same in the
472 registry of the court having jurisdiction of the dispute.

473 (6) The commission claimed in the commission notice shall
474 be deemed confirmed by the owner and the closing agent shall
475 release the reserved proceeds to the broker, if the closing
476 agent is required pursuant to subsection (1) to reserve any or
477 all of the owner's net proceeds, and if:

478 (a) Five days have passed after the closing.

479 (b) The owner has neither confirmed nor disputed the
480 claimed commission to the closing agent.

481 (c) The closing agent receives reasonably satisfactory
482 evidence that the broker delivered a copy of the commission
483 notice to the owner in accordance with s. 475.705.

484 (7) If the owner's net proceeds consist in whole or in
485 part of a purchase-money note, and if the money portion of the
486 owner's net proceeds is insufficient to pay the full amount of
487 the commission claimed, the broker's lien under this part for
488 the portion of the commission not paid from the money proceeds
489 shall attach to the purchase-money note and any security
490 therefor, and the closing agent shall reserve and release the
491 purchase-money note in accordance with this part in the same
492 manner as the money portion of the reserved proceeds. If the

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493 owner and the broker are unable to agree within 5 days after the
494 closing regarding the closing agent's release of the purchase-
495 money note, the closing agent shall interplead the purchase-
496 money note along with any money reserved proceeds in accordance
497 with s. 475.711.

498 (8) If the disposition of the commercial real estate is
499 part of a like-kind exchange by the owner which is deferred from
500 federal income tax under section 1031 of the Internal Revenue
501 Code of 1986, as amended, and if all of the owner's net proceeds
502 in excess of undisputed commissions shall be delivered to a
503 third party in order to qualify the disposition for such tax
504 deferral treatment, the owner may substitute other cash, a
505 surety bond, an unconditional letter of credit, or other liquid
506 security acceptable to the broker in lieu of any disputed
507 reserved proceeds held by the closing agent under this section
508 or deposited in the court registry in accordance with s.
509 475.711.

510 (9) Upon request of the closing agent or the owner, any
511 broker who has recorded a commission notice under s. 475.707
512 shall submit a satisfaction or release of the commission notice
513 in recordable form to the closing agent to be held in escrow
514 pending the closing and the closing agent's release to the
515 broker of the portion of the owner's net proceeds reserved by
516 the closing agent under this section. The closing agent is
517 authorized to deduct from the reserved proceeds payable to the
518 broker the cost of recording the satisfaction or release of the
519 commission notice.

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520 (10) Neither the closing agent's requirement for an
 521 owner's affidavit pursuant to subsection (2), nor the closing
 522 agent's reservation of any portion of an owner's net proceeds
 523 pursuant to subsections (1) or (2), shall relieve the owner of
 524 the owner's obligation to close the transaction for the
 525 disposition of the commercial real estate, including, without
 526 limitation, any obligation of the owner to the buyer under the
 527 purchase and sale contract to discharge mortgages, liens, or
 528 encumbrances against the commercial real estate that were
 529 recorded after the commission notice and therefore are not
 530 subtracted from gross sales proceeds when computing the owner's
 531 net proceeds under s. 475.719.

532 (11) A closing agent is not liable to the owner, the
 533 broker, or any other person in any civil action for any action
 534 taken by the closing agent to comply with the provisions of this
 535 part.

536 (12) No provision of this part shall require a closing
 537 agent to serve involuntarily more than 5 days after a closing as
 538 an escrow agent or stakeholder for any monies or other property
 539 that are disputed by the owner and the broker under the
 540 provisions of this part.

541 475.711 Interpleader or other proceedings; deposit of
 542 reserved proceeds in court registry; discharge of closing agent
 543 from further liability.--

544 (1) The closing agent shall, by interpleader action or
 545 other legal proceeding, seek adjudication of the rights of the
 546 parties with respect to disputed reserved proceeds by the county
 547 court or circuit court, whichever may have jurisdiction of

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548 controversies in the amount of the disputed reserved proceeds,
 549 in a county where all or a portion of the commercial real estate
 550 is located if, after the closing of a transaction for the
 551 disposition of the commercial real estate:

552 (a) The closing agent has reserved all or a portion of the
 553 owner's net proceeds pursuant to s. 475.709 and the owner
 554 disputes the release to the broker of all or any portion of the
 555 reserved proceeds.

556 (b) The owner and the broker have not agreed in writing,
 557 within 5 days after the closing, regarding the closing agent's
 558 release of the disputed reserved proceeds.

559 (c) Neither the owner nor the broker have commenced a
 560 civil action to determine the rights of the parties with respect
 561 to the disputed reserved proceeds.

562 (2) Unless otherwise agreed to by the owner and the broker
 563 in writing, the closing agent shall deposit the net amount of
 564 disputed reserved proceeds in the registry of the court having
 565 jurisdiction of any legal action or proceeding to determine the
 566 rights of the parties in the disputed reserved proceeds, whether
 567 commenced by the closing agent under subsection (1) or commenced
 568 by the owner or the broker under s. 475.713 or otherwise. The
 569 closing agent shall determine the net amount of disputed
 570 reserved proceeds deposited in the court registry by deducting
 571 from the disputed reserved proceeds:

572 (a) Any costs incurred by the closing agent to commence
 573 such action or proceeding, or to appear in any such action or
 574 proceeding commenced by the owner or the broker, including
 575 reasonable attorney's fees.

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576 (b) The costs of recording the affidavit described in
 577 subsection (3) if any commission notice has been recorded.

578 (c) The service charges of the clerk of court under s.
 579 28.24 for receiving the net amount of such disputed reserved
 580 proceeds into the registry of the court.

581 (3) If a commission notice has been recorded in the public
 582 records of the county or counties where the commercial real
 583 estate is located, upon depositing the net disputed reserved
 584 proceeds with the clerk of court pursuant to subsection (2), the
 585 closing agent shall execute and record an affidavit referring to
 586 the recorded commission notice and stating that the net disputed
 587 reserved proceeds have been so deposited in accordance with this
 588 part. The recording of the affidavit shall operate to release
 589 the recorded commission notice.

590 (4) If a closing agent deposits the net disputed reserved
 591 proceeds with the clerk of court pursuant to subsection (2), the
 592 closing agent is discharged from any further liability or
 593 responsibility concerning the disputed reserved proceeds.

594 475.713 Civil action concerning commission; order to show
 595 cause; hearing; release of proceeds; award of costs and
 596 attorney's fees.--

597 (1) If a commission notice claiming a commission is
 598 delivered to an owner pursuant to s. 475.705 and the owner
 599 disputes the claimed commission, the owner or the broker may
 600 file a civil action concerning the commission claim in the
 601 county court or circuit court, whichever has jurisdiction of
 602 controversies in the amount of the claimed commission, of the

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603 county where the commercial real estate or a portion of the
604 commercial real estate is located.

605 (2) In a civil action by the owner, at the time the
606 summons is issued or at any time before the complaint is
607 answered by the broker, the owner may apply to the court for an
608 order directing the broker to appear before the court at a time
609 not earlier than 7 days or later than 15 days after the date of
610 service of the motion and order on the broker to show cause why
611 the commission claim should not be dismissed. The motion must
612 state the grounds upon which relief is sought and must be
613 supported by the affidavit of the owner setting forth a concise
614 statement of the facts upon which the motion is based. The order
615 to show cause shall clearly state that if the broker fails to
616 appear at the time and place specified in the order, the
617 broker's claim of lien against the owner's net proceeds under
618 this part shall be released, with prejudice, and the broker
619 shall be ordered to pay the costs incurred by the owner and the
620 closing agent, including reasonable attorney's fees.

621 (3) The court shall issue an order releasing the broker's
622 claim of lien against the owner's net proceeds from such
623 disposition, discharging any commission notice that may be have
624 been recorded, ordering the release to the owner of the disputed
625 reserved proceeds, and awarding costs and reasonable attorney's
626 fees to the owner to be paid by the broker if, following a
627 hearing, the court determines that the owner is not a party to a
628 brokerage agreement that will result in the owner being
629 obligated to pay the broker the claimed commission or any
630 portion thereof with respect to the disposition of the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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631 commercial real estate identified in the commission notice. If
 632 the court determines that the owner is a party to a brokerage
 633 agreement that will result in the owner being obligated to pay
 634 the broker the claimed commission or any portion thereof with
 635 respect to the disposition of the commercial real estate
 636 identified in the commission notice, the court shall issue an
 637 order so stating, ordering the release to the broker of the
 638 disputed reserved proceeds or such portion thereof to which the
 639 court determines that the broker is entitled, and awarding costs
 640 and reasonable attorney's fees to the broker to be paid by the
 641 owner. Such orders are final judgments.

642 (4) A certified copy of any order issued by the court
 643 pursuant to subsection (3) discharging a recorded commission
 644 notice shall be recorded at the expense of the broker in the
 645 public records where the commission notice was recorded, and
 646 such order shall operate as a cancellation of the recorded
 647 commission notice.

648 (5)(a) In a civil action commenced by the owner or the
 649 broker under this section or in an interpleader action or other
 650 proceeding commenced by the closing agent under s. 475.711, the
 651 owner or the broker that is not the prevailing party shall be
 652 required to pay:

653 1. The costs and reasonable attorney's fees incurred in
 654 the action by the prevailing party.

655 2. The costs and reasonable attorney's fees incurred in
 656 the action by the closing agent.

657 3. The amount of any costs, recording charges, and service
 658 charges of the clerk of court that were deducted from the

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659 disputed reserved proceeds under s. 475.711(2) in determining
 660 the net amount thereof deposited into the registry of the court.

661 (b) If the court determines that neither the owner nor the
 662 broker is the prevailing party, the amounts set forth in
 663 subparagraphs 1.and 2. of this subsection shall be divided
 664 equally between and paid by the owner and the broker.

665 (6) Proceedings conducted pursuant to this section shall
 666 not affect rights and remedies otherwise available to the owner
 667 or the broker under other applicable law.

668 475.715 Priority of recorded commission notice.--All
 669 statutory liens, consensual liens, mortgages, deeds of trust,
 670 assignments of rents, and other encumbrances, including all
 671 advances or charges made or accruing thereunder, whether
 672 voluntary or obligatory, and all modifications, extensions,
 673 renewals, and replacements thereof, recorded prior to the
 674 recording of a commission notice pursuant to the provisions of
 675 s. 475.707, have priority over the commission notice, and the
 676 amount required to discharge such prior recorded liens shall be
 677 subtracted from gross sales proceeds in computing the owner's
 678 net proceeds unless the buyer permits the same to remain a lien
 679 against the title to the commercial real estate. A prior
 680 recorded lien includes, without limitation, a valid construction
 681 lien claim that is recorded after the recording of the broker's
 682 commission notice but which relates back to a notice of
 683 commencement recorded under s. 713.13 prior to the recording
 684 date of the broker's commission notice.

685 475.717 Service of notice.--Notices to be delivered to a
 686 party pursuant to this part other than service of process as

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687 required in civil actions shall be by service of process, by
 688 registered or certified mail with return receipt requested, or
 689 by personal or electronic delivery and obtaining evidence of
 690 delivery in the form of a receipt or other paper or electronic
 691 acknowledgment by the party to whom the notice is delivered.
 692 Delivery is effective at the time of personal service, personal
 693 or electronic delivery, or 3 days following deposit in the mail
 694 as required by this section. Notice to a broker or owner may be
 695 given to the address of the broker or owner that is contained in
 696 the brokerage agreement or such other address as is contained in
 697 a written notice from the broker or owner to the party giving
 698 the notice. If no address is provided in the brokerage
 699 agreement, the notice to the broker may be given to the broker's
 700 address contained in the commission notice. Notice to a closing
 701 agent shall be addressed to the individual responsible for the
 702 closing if the person sending the notice knows that individual's
 703 name.

704 475.719 Buyer's broker.--As used in this section, the term
 705 "buyer's broker" means a broker that is entitled to receive
 706 payment from the buyer of commercial real estate of any fee or
 707 other compensation for licensed services, as specified in a
 708 written contract made between the buyer and the broker on or
 709 after the effective date of this act relating to the buyer's
 710 purchase of the commercial real estate.

711 (1) A written contract between a buyer and a buyer's
 712 broker for the payment by the buyer of any fee or other
 713 compensation to the buyer's broker for licensed services
 714 relating to the sale or disposition of commercial real estate to

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715 the buyer is not a brokerage agreement with the owner under this
716 part, and the buyer's broker is not entitled under this part to
717 record any commission notice, to claim any lien against
718 commercial real estate, or to claim any lien against the owner's
719 net proceeds from the sale or disposition of commercial real
720 estate.

721 (2) If an owner enters into a written contract with a
722 buyer for the sale or disposition of any commercial real estate
723 that will entitle the buyer's broker to receive a fee or other
724 compensation from the buyer under the terms of the buyer's
725 broker's written contract with the buyer, the buyer's broker may
726 give notice of the buyer's broker's right to receive such
727 payment to the closing agent, the owner, the buyer, or any other
728 party to the sale or disposition or the financing thereof,
729 provided that such notice may be given without violating any
730 confidentiality provisions contained in either such written
731 contract.

732 (3) No such notice given by the buyer's broker pursuant to
733 subsection (2) shall constitute a tortious interference with the
734 sale or disposition or financing of the commercial real estate,
735 except this section shall not affect the rights and remedies
736 otherwise available to the owner, the buyer, or the buyer's
737 broker under other applicable law.

738 Section 2. Part IV of chapter 475, Florida Statutes,
739 consisting of sections 475.800, 475.801, 475.803, 475.805,
740 475.807, 475.809, and 475.811, is created to read:

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741 475.800 Short title.--Sections 475.800-475.811 may be
 742 cited as the "Commercial Real Estate Leasing Commission Lien
 743 Act."

744 475.801 Definitions.--As used in this part:

745 (1) "Automatic renewal commission" means a renewal
 746 commission for which the brokerage agreement does not expressly
 747 require the broker to perform any additional services in order
 748 to receive the renewal commission.

749 (2) "Broker" has the same meaning as in s. 475.01.

750 (3) "Brokerage agreement" means a written contract,
 751 entered into on or after the effective date of this act, between
 752 an owner of commercial real estate and a broker that obligates
 753 the owner to pay a commission to the broker for licensed
 754 services provided by the broker relating to the leasing of the
 755 commercial real estate as specified in the contract.

756 (4) "Commercial real estate" means a fee simple interest
 757 or other possessory estate in real property, except an interest
 758 in real property that is:

759 (a) Improved with one single-family residential unit or
 760 one multifamily structure containing one to four residential
 761 units;

762 (b) Unimproved and the maximum permitted development is
 763 one to four residential units under any restrictive covenants,
 764 zoning regulations, or comprehensive plan applicable to that
 765 real property; or

766 (c) Improved with single-family residential units such as
 767 condominiums, townhouses, timeshares, mobile homes, or houses in
 768 a subdivision that may be legally sold, leased, or otherwise

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769 conveyed on a unit-by-unit basis, regardless of whether these
 770 units may be a part of a larger building or parcel containing
 771 more than four residential units.

772 (5) "Commission" means any fee or other compensation that
 773 an owner agrees to pay a broker for licensed services as
 774 specified in a brokerage agreement.

775 (6) "Days" means calendar days, but if a period would end
 776 on a day other than a business day, the last day of that period
 777 shall instead be the next business day.

778 (7) "Lease" means a written agreement creating a
 779 relationship of landlord and tenant with respect to commercial
 780 real estate, such that the tenant acquires from the landlord the
 781 right to possess the commercial real estate for a specified
 782 period of time.

783 (8) "Lien notice" means the written notice of lien made by
 784 a broker claiming a commission under s. 745.805.

785 (9) "Owner" means a person that is vested with fee simple
 786 title or a possessory estate, including a leasehold, in
 787 commercial real estate that is the subject of a lease. For
 788 purposes of this part, the owner obligated to pay a commission
 789 under a brokerage agreement may be a landlord or a tenant.

790 (10) "Real property" means one or more parcels or tracts
 791 of land located in this state, including any appurtenances and
 792 improvements.

793 (11) "Renewal commission" means an additional commission
 794 that may become payable to a broker under a brokerage agreement
 795 if a lease subject to that brokerage agreement is later renewed

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796 or is later modified to expand the leased premises or extend the
797 lease term.

798 475.803 Broker's lien for leasing commission.--

799 (1) A broker has a lien upon the owner's interest in
800 commercial real estate for any commission earned by the broker
801 pursuant to a brokerage agreement with respect to a lease of the
802 commercial real estate. If the owner obligated to pay the
803 commission is the landlord, the broker's lien attaches to the
804 landlord's interest in the commercial real estate identified in
805 the brokerage agreement but not to the tenant's leasehold
806 estate. If the owner obligated to pay the commission is the
807 tenant, the broker's lien attaches to the tenant's leasehold
808 estate but not to the landlord's interest in the commercial real
809 estate.

810 (2) For purposes of this part, a commission other than a
811 renewal commission is earned on the earlier of the date that:

812 (a) An event occurs that, under the brokerage agreement,
813 defines when the commission is earned; or

814 (b) The owner enters into a lease of all or part of the
815 commercial real estate specified in the brokerage agreement,
816 provided that a commission would be payable to the broker
817 pursuant to the brokerage agreement for that lease.

818 (3) For the purposes of this part, a renewal commission
819 with respect to a lease renewal or lease modification is deemed
820 earned when the broker performs all additional services relating
821 to the lease renewal or lease modification that are expressly
822 required by the brokerage agreement. If the brokerage agreement
823 does not expressly require the broker to perform any additional

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824 services in order to receive the renewal commission, the renewal
 825 commission is an automatic renewal commission and is deemed
 826 earned when the broker first earned a commission for that lease.

827 (4) For purposes of this part, a commission is payable at
 828 the time provided in the brokerage agreement. If payment of the
 829 commission is conditioned on the occurrence of an event and that
 830 event does not occur, a broker may not enforce a lien for that
 831 commission under this part.

832 (5) A broker's lien for commission arising under this
 833 part:

834 (a) Belongs to the broker named in the brokerage agreement
 835 and not to an employee or independent contractor of the broker.

836 (b) Cannot be assigned voluntarily or by operation of law
 837 and may not be enforced by a person other than the broker.

838 (c) Cannot be waived before the commission is earned.

839 (d) Cannot be waived by any person other than the broker,
 840 regardless of whether that person may execute and bind the
 841 broker to a brokerage agreement.

842 (6) A broker shall disclose to the owner at or before the
 843 time the owner executes the brokerage agreement that this part
 844 creates lien rights for a commission earned by the broker that
 845 are not waivable before the commission is earned by the broker.
 846 A broker may not enforce a lien under this part for a commission
 847 earned under a brokerage agreement for which the disclosure
 848 required by this subsection was not made. A disclosure in
 849 substantially the following form shall be sufficient: "The
 850 Florida Commercial Real Estate Leasing Commission Lien Act
 851 provides that when a broker has earned a commission by

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852 performing licensed services under a brokerage agreement with
 853 you, the broker may claim a lien against your interest in the
 854 property for the broker's commission. The broker's lien rights
 855 under the act cannot be waived before the commission is earned."

856 475.805 Contents of lien notice.--

857 (1) A lien notice made by a broker with respect to a
 858 commission claimed under this part shall be in writing, shall be
 859 signed and sworn to or affirmed by the broker under penalty of
 860 perjury before a notary public, and shall include the following:

861 (a) The name of the owner of the commercial real estate
 862 who is obligated to pay the claimed commission.

863 (b) A statement whether the owner obligated to pay the
 864 commission is the landlord or the tenant under the lease for
 865 which the commission is claimed.

866 (c) The name of the person owning the fee simple interest
 867 in the commercial real estate, if other than the owner obligated
 868 to pay the commission.

869 (d) The legal description of the commercial real estate.

870 (e) The name, mailing address, telephone number, and
 871 license number of the broker.

872 (f) The effective date of the brokerage agreement.

873 (g) The amount of the commission claimed by the broker,
 874 which may be stated in a dollar amount or may be stated in the
 875 form of a formula determining the amount, such as a percentage
 876 of the rents payable under the lease.

877 (h) A description of the lease sufficient to identify the
 878 lease for which the commission is claimed, including, if then
 879 known to the broker, the names of the landlord and tenant under

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880 the lease, the date of the lease, and the identification of the
881 leased premises.

882 (i) A statement of whether the broker is claiming an
883 automatic renewal commission and the amount of such automatic
884 renewal commission or the formula for computing the same.

885 (j) A statement under penalty of perjury that the broker
886 has read the lien notice, knows its contents, believes the same
887 to be true and correct, and makes the commission claim pursuant
888 to the brokerage agreement described in the lien notice.

889 (2) A lien notice in substantially the following form
890 shall be sufficient for purposes of subsection (1):

891
892 BROKER'S COMMISSION LIEN NOTICE UNDER
893 FLORIDA COMMERCIAL REAL ESTATE LEASING COMMISSION LIEN ACT
894

895 Notice is hereby given, pursuant to the Florida Commercial Real
896 Estate Leasing Commission Lien Act, part IV of chapter 475,
897 Florida Statutes (the "act"), that the undersigned real estate
898 broker is entitled to receive a leasing commission from the
899 owner named below pursuant to the terms of a written brokerage
900 commission agreement regarding a lease of the commercial real
901 estate described below, and the undersigned broker claims a lien
902 under the act against the owner's interest in the commercial
903 real estate in the amount set forth below.

904 1. Name of the owner who is obligated to pay the commission:

905 _____

906 2. (Check one:) The owner obligated to pay the commission is:

907 [] the landlord under the lease.

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908 [] the tenant under the lease.

909 3. Name of the person owing the fee simple interest in the
910 commercial real estate, if other than the owner who is obligated
911 to pay the commission:

912 _____

913 4. Legal description of the commercial real estate:

914 _____

915 5. Name, mailing address, telephone number, and Florida broker
916 license number of the undersigned broker:

917 _____

918 _____

919 _____

920 6. Effective date of the written brokerage commission agreement
921 between the owner and the broker under which the commission is
922 or will be payable: _____, _____

923 7. Amount of commission claimed by the undersigned broker:

924 \$_____, or

925 _____ percent of rents payable under lease, or

926 [specify other formula for determination of commission
927 amount]: _____.

928 8. The lease for which the commission is claimed is described
929 as follows [provide all information known to the broker]:

930 Name of landlord: _____

931 Name of tenant: _____

932 Date of lease: _____, _____

933 Leased premises: _____

934 9. Automatic renewal commissions (check yes or no): Is the
935 undersigned broker claiming a commission that may become payable

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936 | if the lease is later renewed or modified to expand the leased
937 | premises or to extend the lease term, but the written brokerage
938 | commission agreement does not expressly require the broker to
939 | perform any additional services in order to receive this later
940 | commission?

941 | [] Yes

942 | [] No

943 | If yes, specify the amount of such later commission or the
944 | formula for computing the later commission:

945 | _____

946 | 10. The expiration date of this lien notice is 2 years after
947 | the date of recording, unless the answer to paragraph 9 is yes,
948 | in which case the expiration date of this lien notice for the
949 | commission described in paragraph 9 is 10 years after the date
950 | of recording.

951 | 11. The undersigned broker, under penalty of perjury, hereby
952 | swears or affirms that the undersigned broker has read this lien
953 | notice, knows its contents and believes the same to be true and
954 | correct, and that the undersigned broker is making this
955 | commission claim pursuant to the written brokerage commission
956 | agreement described in this lien notice.

957 |
958 | Signed: _____ (broker) _____

959 |
960 | Signed and sworn to or affirmed under penalty of perjury before
961 | me, a notary public, this _____ day of _____, _____, by
962 | _____

963 |

Signed: _____(notary public)_____

475.807 Recording lien notice; effectiveness.--

(1)(a) After a commission is earned under this part, the broker may record a lien notice in the public records maintained by the clerk of court in the county or counties in which the commercial real estate is located. The lien notice shall be recorded no later than the earlier of:

1. Ninety days after the tenant takes possession of the leased premises or, in the case of a renewal commission that requires the broker to perform additional services as provided in s. 475.803(3), 90 days after the broker performs the additional services required for the renewal commission; or

2. The date on which the owner who is obligated to pay the commission records in the public records a deed or assignment transferring the owner's interest in the commercial real estate to a bona fide purchaser for value.

(b) A broker who fails to record a lien notice within the time period prescribed by this section may not enforce a lien for the claimed commission under this part, and a lien notice that is recorded outside of the time period prescribed by this section is void.

(2) Within 7 days after recording the lien notice, the broker shall deliver a copy of the lien notice to the owner obligated to pay the claimed commission.

(3) The broker's lien created by this part against the commercial real estate is perfected by such recording of the lien notice and takes priority under this part as of the date of

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992 the recording of the lien notice. The priority of the lien
 993 notice does not relate back to the date of the brokerage
 994 agreement.

995 (4) If the commission is to be paid in installments and
 996 any of those installments are due after the lease is executed,
 997 the lien notice is valid only to the extent that moneys remain
 998 unpaid by the owner to the broker.

999 (5) A recorded lien notice is effective under this part
 1000 only with respect to leases made by the owner named in the lien
 1001 notice and the lien notice is ineffective with respect to any
 1002 leases that are made by:

1003 (a) A bona fide purchaser for value of the commercial real
 1004 estate;

1005 (b) A purchaser at any mortgage foreclosure sale of the
 1006 commercial real estate; or

1007 (c) Any successor owner acquiring the commercial real
 1008 estate from a purchaser described in paragraphs (a) or (b).

1009 (6) Whenever a lien notice is recorded and a condition or
 1010 event occurs or fails to occur that would preclude the broker
 1011 from receiving the claimed commission under the terms of the
 1012 brokerage agreement, including the filing of a lien notice in a
 1013 manner that does not comply with this part, the broker shall,
 1014 within 7 days following demand by the owner, record a written
 1015 release of the lien notice in the public records of the county
 1016 where the lien notice was recorded.

1017 (7) If a broker records a lien notice pursuant to this
 1018 section and the claimed commission is paid or the lien notice is
 1019 otherwise discharged or satisfied pursuant to this part, the

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1020 broker shall, within 7 days after the commission is paid or the
 1021 lien notice is otherwise discharged or satisfied, record a
 1022 written release of the lien notice in the public records of the
 1023 county where the lien notice was recorded.

1024 (8)(a) Except as provided in paragraph (b), a lien notice
 1025 recorded by a broker under this part for a claimed commission
 1026 expires 2 years after the date of recording, unless within that
 1027 time the broker commences an action to foreclose the lien under
 1028 s. 475.809 and records a notice of lis pendens in the public
 1029 records of the county where the lien notice was recorded.

1030 (b) To the extent that a lien notice recorded by a broker
 1031 under this part claims an automatic renewal commission that is
 1032 earned but not then payable, the lien notice expires 10 years
 1033 after the date of recording, unless within that time the broker
 1034 commences an action to foreclose the lien under s. 475.809 and
 1035 records a notice of lis pendens in the public records of the
 1036 county where the lien notice was recorded. If the brokerage
 1037 agreement remains effective, the broker may extend the
 1038 expiration date of a lien notice for an automatic renewal
 1039 commission by recording an extension notice in the same public
 1040 records within the last 6 months before such expiration date. An
 1041 extension notice shall refer to the recording information of the
 1042 original lien notice, shall state that the brokerage agreement
 1043 remains effective, and shall include the same information and be
 1044 executed in the same manner as required by s. 475.805(1) for the
 1045 original lien notice. A timely recorded extension notice shall
 1046 extend the expiration date of the original recorded lien notice
 1047 by 10 additional years. Successive extension notices may be

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1048 | recorded for so long as the brokerage agreement remains
 1049 | effective between the broker and the owner. Within 10 days after
 1050 | recording an extension notice, the broker shall deliver a copy
 1051 | thereof to the owner.

1052 | (c) The owner or the owner's agent or attorney may elect
 1053 | to shorten the time within which the broker shall commence an
 1054 | action to foreclose a lien under s. 475.809, or to enforce a
 1055 | claim against a transfer bond or other security under s.
 1056 | 475.811, by recording in the clerk's office a notice of contest
 1057 | in substantially the following form:

1058 |
 1059 | NOTICE OF CONTEST OF BROKER'S LIEN

1060 |
 1061 | To: (Name and address of broker) _____

1062 | You are notified that the undersigned contests the lien notice
 1063 | filed by you on _____, (year) , and recorded in Official
 1064 | Records Book _____, Page _____, of the public records of
 1065 | _____ County, Florida, and that the time within which
 1066 | you may file suit to enforce your lien is limited to 60 days
 1067 | from the date of service of this notice. This _____ day of
 1068 | _____, (year) .

1069 |
 1070 | Signed: (Owner or Attorney)

1071 |
 1072 | The lien of any broker upon whom such a notice of contest is
 1073 | served and who fails to institute a suit to enforce the lien
 1074 | within 60 days after service of such notice of contest shall be
 1075 | extinguished automatically. The clerk shall mail a copy of the

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1076 notice of contest to the broker at the address shown in the lien
 1077 notice or most recent amendment thereto and shall certify to
 1078 such service on the face of the notice of contest and record the
 1079 notice of contest. Service of the notice of contest by the clerk
 1080 shall be deemed complete upon mailing.

1081 475.809 Foreclosure of lien; civil action by owner; award
 1082 of costs and attorney's fees.--

1083 (1) A broker may enforce a lien for a commission that is
 1084 earned and payable under this part by a foreclosure suit in the
 1085 same manner as if the lien notice were a mortgage recorded
 1086 against the commercial real estate of the owner obligated to pay
 1087 the claimed commission. The foreclosure shall be commenced in
 1088 the county court or circuit court, whichever may have
 1089 jurisdiction of controversies in the amount of the claimed
 1090 commission, of the county where the lien notice was recorded.
 1091 The foreclosure action shall be commenced before the lien notice
 1092 expires or is extinguished under s. 475.807(8), otherwise the
 1093 lien notice shall become null and void and have no further force
 1094 or effect.

1095 (2) If a lien notice is recorded pursuant to s. 475.807
 1096 and the owner disputes the claimed commission, the owner may
 1097 file a civil action seeking to discharge the lien in the county
 1098 court or circuit court, whichever may have jurisdiction of
 1099 controversies in the amount of the claimed commission, of the
 1100 county where the lien notice was recorded.

1101 (3) In any action to foreclose a lien or to discharge a
 1102 lien pursuant to this section, the prevailing party shall be
 1103 awarded costs and reasonable attorney's fees.

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1104 475.811 Transfer of lien to security.--
 1105 (1)(a) Any lien claimed by a broker by recording a lien
 1106 notice under this part may be transferred by any person having
 1107 an interest in the commercial real estate upon which the lien is
 1108 imposed from such commercial real estate to other security by
 1109 either:
 1110 1. Depositing in the clerk's office a sum of money; or
 1111 2. Filing in the clerk's office a bond executed as surety
 1112 by a surety insurer licensed to do business in this state,
 1113 either to be in an amount equal to the amount claimed in the
 1114 lien notice, plus interest thereon at the legal rate for 3
 1115 years, plus \$1,000 or 25 percent of the amount demanded in the
 1116 lien notice, whichever is greater, to apply on any attorney's
 1117 fees and court costs that may be taxed in any proceeding to
 1118 enforce said lien.
 1119 (b) Such deposit or bond shall be conditioned to pay any
 1120 judgment or decree that may be rendered for the satisfaction of
 1121 the lien for which such lien notice was recorded. Upon making
 1122 such deposit or filing such bond, the clerk shall make and
 1123 record a certificate showing the transfer of the lien from the
 1124 commercial real estate to the security and shall mail a copy
 1125 thereof by registered or certified mail to the broker named in
 1126 the lien notice at the address stated therein. Upon filing the
 1127 certificate of transfer the commercial real estate shall
 1128 thereupon be released from the lien claimed and such lien shall
 1129 be transferred to said security. Subject to any order of the
 1130 court increasing the amount required for the lien transfer
 1131 deposit or bond, no other judgment or decree to pay money may be

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1132 entered by the court against the owner on account of the
 1133 commission claimed in the lien notice. The clerk shall be
 1134 entitled to a service charge for making and serving the
 1135 certificate, in the amount of up to \$15. If the transaction
 1136 involves the transfer of multiple liens, an additional charge of
 1137 up to \$7.50 for each additional lien shall be charged. For
 1138 recording the certificate and approving the bond, the clerk
 1139 shall receive her or his usual statutory service charges as
 1140 prescribed in s. 28.24. Any number of liens may be transferred
 1141 to one such security.

1142 (2) Any excess of the security over the aggregate amount
 1143 of any judgments or decrees rendered plus costs actually taxed
 1144 shall be repaid to the party filing the security or her or his
 1145 successor in interest. Any deposit of money shall be considered
 1146 as paid into court and shall be subject to the provisions of law
 1147 relative to payments of money into court and the disposition of
 1148 same.

1149 (3) In any action pending under s. 475.809 to foreclose or
 1150 discharge a lien any party having an interest in such security
 1151 or the commercial real estate from which the lien was
 1152 transferred may at any time and any number of times file a
 1153 motion for an order to require additional security, reduction of
 1154 security, change or substitution of sureties, payment of
 1155 discharge thereof, or any other matter affecting said security.
 1156 If the court finds that the amount of the deposit or bond in
 1157 excess of the amount claimed in the lien notice is insufficient
 1158 to pay the broker's attorney's fees and court costs incurred in

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1159 | the action to enforce the lien, the court shall increase the
 1160 | amount of the cash deposit or lien transfer bond.

1161 | (4) If a proceeding to enforce a transferred lien is not
 1162 | commenced within the time specified in s. 475.809 or if it
 1163 | appears that the transferred lien has been satisfied of record,
 1164 | the clerk shall return said security upon request of the person
 1165 | depositing or filing the same, or the insurer.

1166 | Section 3. Paragraph (j) of subsection (1) of section
 1167 | 475.42, Florida Statutes, is amended to read:

1168 | 475.42 Violations and penalties.--

1169 | (1) VIOLATIONS.--

1170 | (j) A broker or sales associate may not place, or cause to
 1171 | be placed, upon the public records of any county, any contract,
 1172 | assignment, deed, will, mortgage, affidavit, or other writing
 1173 | which purports to affect the title of, or encumber, any real
 1174 | property if the same is known to her or him to be false, void,
 1175 | or not authorized to be placed of record, or not executed in the
 1176 | form entitling it to be recorded, or the execution or recording
 1177 | whereof has not been authorized by the owner of the property,
 1178 | maliciously or for the purpose of collecting a commission, or to
 1179 | coerce the payment of money to the broker or sales associate or
 1180 | other person, or for any unlawful purpose. However, nothing in
 1181 | this paragraph shall be construed to prohibit a broker or a
 1182 | sales associate from recording a judgment rendered by a court of
 1183 | this state or to prohibit a broker from placing a lien on a
 1184 | property where expressly permitted by contractual agreement or
 1185 | otherwise allowed by law.

1186 | Section 4. This act shall take effect October 1, 2005.