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HB 1459, Engrossed 1

2005 Legislature

1 A bill to be entitled
2 An act relating to liens on commercial real estate;
3 creating part III of ch. 475, F.S., the "Commercial Real
4 Estate Sales Commission Lien Act"; providing definitions;
5 specifying conditions under which a broker is entitled to
6 a lien upon the owner's net proceeds from the disposition
7 of commercial real estate for any commission earned by the
8 broker under a brokerage agreement; providing that the
9 lien cannot be assigned, enforced, or waived by anyone
10 other than the broker; requiring disclosure; providing for
11 the contents of the commission notice and delivery to
12 certain parties; providing a form for the commission
13 notice; providing that a lien may not be enforced if the
14 notice is not delivered to certain parties; providing that
15 the commission notice may be recorded; providing for
16 expiration and extension under certain conditions;
17 providing for release of the commission notice under
18 certain conditions; providing the duties of the closing
19 agent; requiring the closing agent to reserve an owner's
20 proceeds under certain conditions; providing for the
21 release of proceeds under certain conditions; requiring
22 deduction of certain costs from the proceeds; providing
23 for interpleader or other legal proceedings sought by a
24 closing agent to adjudicate certain rights; providing for
25 the deposit of reserved proceeds in a court registry;
26 providing for the discharge of the closing agent from
27 further liability; providing for a civil action if a
28 dispute arises concerning the proceeds; providing that the

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

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29 | prevailing party may recover certain fees and costs
30 | incurred in a civil action; establishing the priority of a
31 | recorded commission notice; providing for the service of
32 | notice; providing that a buyer's broker is not entitled to
33 | a lien; providing certain conditions under which a buyer's
34 | broker may seek payment of a commission; creating part IV
35 | of ch. 475, F.S., the "Commercial Real Estate Leasing
36 | Commission Lien Act"; providing definitions; providing
37 | conditions under which a broker may place a lien upon an
38 | owner's interest in commercial real estate for any
39 | commission earned under a brokerage agreement with respect
40 | to a lease of commercial real estate; providing that the
41 | lien cannot be assigned, enforced, or waived by anyone
42 | other than the broker; requiring disclosure; providing for
43 | the contents of the lien notice; providing a form for the
44 | lien notice; providing that the lien notice may be
45 | recorded; providing that a lien may not be enforced if the
46 | broker fails to record the notice; providing for
47 | effectiveness of a recorded lien notice; providing for
48 | release of the lien notice under certain conditions;
49 | providing for expiration and extension under certain
50 | conditions; providing for foreclosure of a recorded lien
51 | under certain conditions; providing a form; providing for
52 | a civil action if a dispute arises concerning the
53 | proceeds; providing that the prevailing party may recover
54 | certain fees and costs incurred in a civil action;
55 | providing procedures to transfer a lien to a security;
56 | providing that the clerk of court may collect a service

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57 | charge; providing for subordination of a broker's lien;
 58 | amending s. 475.42, F.S.; providing that a broker may
 59 | place a lien when allowed by law; providing an effective
 60 | date.

61 |

62 | Be it Enacted by the Legislature of the State of Florida:

63 |

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

68 | 475.700 Popular name.--Sections 475.700-475.719 may be
 69 | cited as the "Commercial Real Estate Sales Commission Lien Act."

70 | 475.701 Definitions.--As used in this part:

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

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

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

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

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

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

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

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

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

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

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

108 (9) "Disposition" means a voluntary conveyance or transfer
109 of the title to or other ownership interest in any commercial
110 real estate specified in a brokerage agreement. A disposition

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111 does not include a transfer pursuant to a foreclosure sale and
 112 does not include a lease.

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

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

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

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

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

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

136 475.703 Broker's lien for sales commission.--

137 (1) A broker has a lien upon the owner's net proceeds from
 138 the disposition of commercial real estate for any commission

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

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

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

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

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

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

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

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

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

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

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

182 475.705 Contents of commission notice; delivery to owner
 183 and closing agent.--

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

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

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

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

- 193 | (d) The effective date of the brokerage agreement.
- 194 | (e) The amount of the commission claimed by the broker,
 195 | which may be stated in a dollar amount or may be stated in the
 196 | form of a formula determining the amount, such as a percentage
 197 | of the sales price.
- 198 | (f) A statement under penalty of perjury that the broker
 199 | has read the commission notice, knows its contents, believes the
 200 | same to be true and correct, and makes the commission claim
 201 | pursuant to the brokerage agreement described in the notice.
- 202 | (g) A statement that the commission notice or a copy
 203 | thereof has been delivered to the owner and that the commission
 204 | notice may be recorded in the public records of the county or
 205 | counties where the commercial real estate is located.
- 206 | (h) A statement that this part provides that if the owner
 207 | disputes the claimed commission the owner shall notify the
 208 | closing agent of such dispute not later than 5 days after the
 209 | closing, or the owner will be deemed to have confirmed the
 210 | commission and this part will require the closing agent to pay
 211 | the commission to the broker from the owner's net proceeds from
 212 | the disposition of the commercial real estate.
- 213 | (2) A commission notice in substantially the following
 214 | form shall be sufficient for purposes of subsection (1):

BROKER'S COMMISSION NOTICE UNDER
FLORIDA COMMERCIAL REAL ESTATE SALES COMMISSION LIEN ACT

218 |
 219 | Notice is hereby given pursuant to the Florida Commercial Real
 220 | Estate Sales Commission Lien Act, part III of chapter 475,

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221 Florida Statutes (the "act"), that the undersigned real estate
 222 broker is entitled to receive a sales commission in the amount
 223 set forth below from the owner named below pursuant to the terms
 224 of a written brokerage commission agreement regarding the
 225 commercial real estate described below, and the undersigned
 226 broker claims a lien under the act against the owner's net
 227 proceeds from the disposition of the commercial real estate. The
 228 act and this commission notice do not create a lien against the
 229 commercial real estate itself, but only against the owner's net
 230 proceeds.

- 231
- 232 1. Name of the owner who is obligated to pay the commission:
 233 _____
- 234 2. Legal description of the commercial real estate:
 235 _____
- 236 3. Name, mailing address, telephone number, and Florida broker
 237 license number of the undersigned broker:
 238 _____
 239 _____
 240 _____
- 241 4. Effective date of the written brokerage commission agreement
 242 between the owner and the broker under which the commission is
 243 or will be payable: _____,
- 244 5. Amount of commission claimed by the undersigned broker:
 245 \$ _____, or
 246 _____ percent of sales price, or
 247 [specify other formula for determination of commission amount]:
 248 _____.

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

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

257
 258 Signed: _____ (broker)

259
 260 Signed and sworn to or affirmed under penalty of perjury before
 261 me, a notary public, this _____ day of _____, _____, by
 262 _____

263
 264 Signed: _____ (notary public)

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

273
 274 This commission notice may be recorded in the public records of
 275 the county or counties where the commercial real estate is
 276 located.

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

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

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

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

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

303 (b) The broker executes and delivers to the closing agent
304 a sworn affidavit stating that the copy of the commission notice

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305 was not delivered within the time period specified in subsection
 306 (3) solely because the owner entered into a contract for the
 307 disposition of the commercial real estate without the knowledge
 308 of the broker.

309
 310 Notwithstanding the provisions of this subsection, a broker who
 311 fails to deliver a copy of a commission notice to the owner and
 312 the closing agent before the disbursement of the owner's net
 313 proceeds may not enforce a lien for the commission under this
 314 part, and the delivery of a copy of a commission notice after
 315 such disbursement is ineffective under this part.

316 475.707 Recording commission notice; effectiveness.--

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

322 (a) Subject to the limitation in paragraph (b), the
 323 broker's lien created by this part against the owner's net
 324 proceeds is perfected by such recording of the commission notice
 325 and takes priority pursuant to this part as of the date of the
 326 recording of the commission notice. The priority of the lien
 327 does not relate back to the date of the brokerage agreement.

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

331 (2) A recorded commission notice is effective under this
 332 part only with respect to dispositions made by the owner named

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333 in the commission notice and after the recordation of a deed
 334 from the owner conveying the commercial real estate specified in
 335 the commission notice to a bona fide purchaser for value the
 336 commission notice is ineffective with respect to any subsequent
 337 dispositions of that commercial real estate.

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

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

358 (5) Whenever a commission notice is recorded and a
 359 condition or event occurs or fails to occur that would preclude
 360 the broker from receiving the claimed commission under the terms

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361 of the brokerage agreement, including the filing of a commission
362 notice in a manner that does not comply with this part, the
363 broker shall, within 7 days following demand by the owner,
364 record a written release of the commission notice in the public
365 records of the county where the commission notice was recorded.

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

374 475.709 Duties of closing agent; reservation of owner's
375 net proceeds.--

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

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

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

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

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

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

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

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

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

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

414 (b) If the closing agent receives an affidavit from the
415 owner under this subsection disclosing that any commission may

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

433 (3) If the provisions of subsection (1) do not require the
434 closing agent to reserve against the owner's net proceeds on
435 account of a commission notice pertaining to the commercial real
436 estate, and if the closing agent receives an owner's affidavit
437 pursuant to subsection (2) stating that the owner is not a party
438 to any brokerage agreement under which any commission may be
439 claimed from the disposition of the commercial real estate, the
440 closing agent has no duty under this part to reserve any money
441 or property for a commission from the owner's net proceeds from
442 the disposition of the commercial real estate.

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

455 (5) If the owner confirms that a commission is payable to
456 the broker, at the closing of the disposition of the commercial
457 real estate the closing agent shall release to the broker the
458 confirmed amount of the commission from the reserved proceeds. A
459 settlement statement executed by the owner and showing the
460 payment of a commission to the broker is confirmation by the
461 owner of the commission amount shown on the settlement
462 statement. If the owner disputes the broker's right to receive
463 all or any portion of the claimed commission, the closing agent
464 shall release to the broker from the reserved proceeds only the
465 undisputed portion of the commission, if any. Until the rights
466 of the owner and the broker with respect to the disputed
467 reserved proceeds are determined pursuant to s. 475.711 or s.
468 475.713 or the owner and the broker otherwise agree in writing,
469 the closing agent shall not release the disputed reserved

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470 proceeds to any person other than to deposit the same in the
471 registry of the court having jurisdiction of the dispute.

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

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

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

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

483 (7) If the owner's net proceeds consist in whole or in
484 part of a purchase-money note, and if the money portion of the
485 owner's net proceeds is insufficient to pay the full amount of
486 the commission claimed, the broker's lien under this part for
487 the portion of the commission not paid from the money proceeds
488 shall attach to the purchase-money note and any security
489 therefor, and the closing agent shall reserve and release the
490 purchase-money note in accordance with this part in the same
491 manner as the money portion of the reserved proceeds. If the
492 owner and the broker are unable to agree within 5 days after the
493 closing regarding the closing agent's release of the purchase-
494 money note, the closing agent shall interplead the purchase-
495 money note along with any money reserved proceeds in accordance
496 with s. 475.711.

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

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

519 (10) Neither the closing agent's requirement for an
520 owner's affidavit pursuant to subsection (2), nor the closing
521 agent's reservation of any portion of an owner's net proceeds
522 pursuant to subsections (1) or (2), shall relieve the owner of
523 the owner's obligation to close the transaction for the
524 disposition of the commercial real estate, including, without

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525 limitation, any obligation of the owner to the buyer under the
 526 purchase and sale contract to discharge mortgages, liens, or
 527 encumbrances against the commercial real estate that were
 528 recorded after the commission notice and therefore are not
 529 subtracted from gross sales proceeds when computing the owner's
 530 net proceeds under s. 475.719.

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

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

540 475.711 Interpleader or other proceedings; deposit of
 541 reserved proceeds in court registry; discharge of closing agent
 542 from further liability.--

543 (1) The closing agent shall, by interpleader action or
 544 other legal proceeding, seek adjudication of the rights of the
 545 parties with respect to disputed reserved proceeds by the county
 546 court or circuit court, whichever may have jurisdiction of
 547 controversies in the amount of the disputed reserved proceeds,
 548 in a county where all or a portion of the commercial real estate
 549 is located if, after the closing of a transaction for the
 550 disposition of the commercial real estate:

551 (a) The closing agent has reserved all or a portion of the
 552 owner's net proceeds pursuant to s. 475.709 and the owner

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553 disputes the release to the broker of all or any portion of the
554 reserved proceeds.

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

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

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

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

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

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

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

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

593 475.713 Civil action concerning commission; order to show
594 cause; hearing; release of proceeds; award of costs and
595 attorney's fees.--

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

604 (2) In a civil action by the owner, at the time the
605 summons is issued or at any time before the complaint is
606 answered by the broker, the owner may apply to the court for an
607 order directing the broker to appear before the court at a time

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

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

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636 order so stating, ordering the release to the broker of the
 637 disputed reserved proceeds or such portion thereof to which the
 638 court determines that the broker is entitled, and awarding costs
 639 and reasonable attorney's fees to the broker to be paid by the
 640 owner. Such orders are final judgments.

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

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

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

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

656 3. The amount of any costs, recording charges, and service
 657 charges of the clerk of court that were deducted from the
 658 disputed reserved proceeds under s. 475.711(2) in determining
 659 the net amount thereof deposited into the registry of the court.

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

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

667 475.715 Priority of recorded commission notice.--All
 668 statutory liens, consensual liens, mortgages, deeds of trust,
 669 assignments of rents, and other encumbrances, including all
 670 advances or charges made or accruing thereunder, whether
 671 voluntary or obligatory, and all modifications, extensions,
 672 renewals, and replacements thereof, recorded prior to the
 673 recording of a commission notice pursuant to the provisions of
 674 s. 475.707, have priority over the commission notice, and the
 675 amount required to discharge such prior recorded liens shall be
 676 subtracted from gross sales proceeds in computing the owner's
 677 net proceeds unless the buyer permits the same to remain a lien
 678 against the title to the commercial real estate. A prior
 679 recorded lien includes, without limitation, a valid construction
 680 lien claim that is recorded after the recording of the broker's
 681 commission notice but which relates back to a notice of
 682 commencement recorded under s. 713.13 prior to the recording
 683 date of the broker's commission notice.

684 475.717 Service of notice.--Notices to be delivered to a
 685 party pursuant to this part other than service of process as
 686 required in civil actions shall be by service of process, by
 687 registered or certified mail with return receipt requested, or
 688 by personal or electronic delivery and obtaining evidence of
 689 delivery in the form of a receipt or other paper or electronic
 690 acknowledgment by the party to whom the notice is delivered.
 691 Delivery is effective at the time of personal service, personal

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692 or electronic delivery, or 3 days following deposit in the mail
 693 as required by this section. Notice to a broker or owner may be
 694 given to the address of the broker or owner that is contained in
 695 the brokerage agreement or such other address as is contained in
 696 a written notice from the broker or owner to the party giving
 697 the notice. If no address is provided in the brokerage
 698 agreement, the notice to the broker may be given to the broker's
 699 address contained in the commission notice. Notice to a closing
 700 agent shall be addressed to the individual responsible for the
 701 closing if the person sending the notice knows that individual's
 702 name.

703 475.719 Buyer's broker.--As used in this section, the term
 704 "buyer's broker" means a broker that is entitled to receive
 705 payment from the buyer of commercial real estate of any fee or
 706 other compensation for licensed services, as specified in a
 707 written contract made between the buyer and the broker on or
 708 after the effective date of this act relating to the buyer's
 709 purchase of the commercial real estate.

710 (1) A written contract between a buyer and a buyer's
 711 broker for the payment by the buyer of any fee or other
 712 compensation to the buyer's broker for licensed services
 713 relating to the sale or disposition of commercial real estate to
 714 the buyer is not a brokerage agreement with the owner under this
 715 part, and the buyer's broker is not entitled under this part to
 716 record any commission notice, to claim any lien against
 717 commercial real estate, or to claim any lien against the owner's
 718 net proceeds from the sale or disposition of commercial real
 719 estate.

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

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

737 Section 2. Part IV of chapter 475, Florida Statutes,
 738 consisting of sections 475.800, 475.801, 475.803, 475.805,
 739 475.807, 475.809, 475.811, and 475.813, is created to read:

740 475.800 Short title.--Sections 475.800-475.813 may be
 741 cited as the "Commercial Real Estate Leasing Commission Lien
 742 Act."

743 475.801 Definitions.--As used in this part:

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

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748 (2) "Broker" has the same meaning as in s. 475.01.
 749 (3) "Brokerage agreement" means a written contract,
 750 entered into on or after the effective date of this act, between
 751 an owner of commercial real estate and a broker that obligates
 752 the owner to pay a commission to the broker for licensed
 753 services provided by the broker relating to the leasing of the
 754 commercial real estate as specified in the contract.
 755 (4) "Commercial real estate" means a fee simple interest
 756 or other possessory estate in real property, except an interest
 757 in real property that is:
 758 (a) Improved with one single-family residential unit or
 759 one multifamily structure containing one to four residential
 760 units;
 761 (b) Unimproved and the maximum permitted development is
 762 one to four residential units under any restrictive covenants,
 763 zoning regulations, or comprehensive plan applicable to that
 764 real property; or
 765 (c) Improved with single-family residential units such as
 766 condominiums, townhouses, timeshares, mobile homes, or houses in
 767 a subdivision that may be legally sold, leased, or otherwise
 768 conveyed on a unit-by-unit basis, regardless of whether these
 769 units may be a part of a larger building or parcel containing
 770 more than four residential units.
 771 (5) "Commission" means any fee or other compensation that
 772 an owner agrees to pay a broker for licensed services as
 773 specified in a brokerage agreement.

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

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

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

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

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

792 (11) "Renewal commission" means an additional commission
 793 that may become payable to a broker under a brokerage agreement
 794 if a lease subject to that brokerage agreement is later renewed
 795 or is later modified to expand the leased premises or extend the
 796 lease term.

797 475.803 Broker's lien for leasing commission.--

798 (1) A broker has a lien upon the owner's interest in
 799 commercial real estate for any commission earned by the broker
 800 pursuant to a brokerage agreement with respect to a lease of the
 801 commercial real estate. If the owner obligated to pay the

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802 commission is the landlord, the broker's lien attaches to the
803 landlord's interest in the commercial real estate identified in
804 the brokerage agreement but not to the tenant's leasehold
805 estate. If the owner obligated to pay the commission is the
806 tenant, the broker's lien attaches to the tenant's leasehold
807 estate but not to the landlord's interest in the commercial real
808 estate.

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

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

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

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

826 (4) For purposes of this part, a commission is payable at
827 the time provided in the brokerage agreement. If payment of the
828 commission is conditioned on the occurrence of an event and that

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829 event does not occur, a broker may not enforce a lien for that
 830 commission under this part.

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

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

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

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

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

841 (6) A broker shall disclose to the owner at or before the
 842 time the owner executes the brokerage agreement that this part
 843 creates lien rights for a commission earned by the broker that
 844 are not waivable before the commission is earned by the broker.
 845 A broker may not enforce a lien under this part for a commission
 846 earned under a brokerage agreement for which the disclosure
 847 required by this subsection was not made. A disclosure in
 848 substantially the following form shall be sufficient: "The
 849 Florida Commercial Real Estate Leasing Commission Lien Act
 850 provides that when a broker has earned a commission by
 851 performing licensed services under a brokerage agreement with
 852 you, the broker may claim a lien against your interest in the
 853 property for the broker's commission. The broker's lien rights
 854 under the act cannot be waived before the commission is earned."

855 475.805 Contents of lien notice.--

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

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

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

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

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

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

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

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

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

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

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

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

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

893
 894 Notice is hereby given, pursuant to the Florida Commercial Real
 895 Estate Leasing Commission Lien Act, part IV of chapter 475,
 896 Florida Statutes (the "act"), that the undersigned real estate
 897 broker is entitled to receive a leasing commission from the
 898 owner named below pursuant to the terms of a written brokerage
 899 commission agreement regarding a lease of the commercial real
 900 estate described below, and the undersigned broker claims a lien
 901 under the act against the owner's interest in the commercial
 902 real estate in the amount set forth below.

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

904 _____

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

906 [] the landlord under the lease.

907 [] the tenant under the lease.

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

911 _____

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912 4. Legal description of the commercial real estate:
 913 _____

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

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

922 7. Amount of commission claimed by the undersigned broker:
 923 \$ _____, or
 924 _____ percent of rents payable under lease, or
 925 [specify other formula for determination of commission
 926 amount]: _____.

927 8. The lease for which the commission is claimed is described
 928 as follows [provide all information known to the broker]:
 929 Name of landlord: _____
 930 Name of tenant: _____
 931 Date of lease: _____, _____
 932 Leased premises: _____

933 9. Automatic renewal commissions (check yes or no): Is the
 934 undersigned broker claiming a commission that may become payable
 935 if the lease is later renewed or modified to expand the leased
 936 premises or to extend the lease term, but the written brokerage
 937 commission agreement does not expressly require the broker to
 938 perform any additional services in order to receive this later
 939 commission?

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940 [] Yes

941 [] No

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

944 _____

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

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

956
957 Signed: _____ (broker)

958
959 Signed and sworn to or affirmed under penalty of perjury before
960 me, a notary public, this _____ day of _____, _____, by
961 _____

962
963 Signed: _____ (notary public)

965 475.807 Recording lien notice; effectiveness.--

966 (1) (a) After a commission is earned under this part, the
967 broker may record a lien notice in the public records maintained

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968 by the clerk of court in the county or counties in which the
969 commercial real estate is located. The lien notice shall be
970 recorded no later than the earlier of:

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

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

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

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

988 (3) The broker's lien created by this part against the
989 commercial real estate is perfected by such recording of the
990 lien notice and takes priority under this part as of the date of
991 the recording of the lien notice. The priority of the lien
992 notice does not relate back to the date of the brokerage
993 agreement.

994 (4) If the commission is to be paid in installments and
995 any of those installments are due after the lease is executed,

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996 the lien notice is valid only to the extent that moneys remain
 997 unpaid by the owner to the broker.

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

1002 (a) A bona fide purchaser for value of the commercial real
 1003 estate;

1004 (b) A purchaser at any mortgage foreclosure sale of the
 1005 commercial real estate; or

1006 (c) Any successor owner acquiring the commercial real
 1007 estate from a purchaser described in paragraphs (a) or (b).

1008 (6) Whenever a lien notice is recorded and a condition or
 1009 event occurs or fails to occur that would preclude the broker
 1010 from receiving the claimed commission under the terms of the
 1011 brokerage agreement, including the filing of a lien notice in a
 1012 manner that does not comply with this part, the broker shall,
 1013 within 7 days following demand by the owner, record a written
 1014 release of the lien notice in the public records of the county
 1015 where the lien notice was recorded.

1016 (7) If a broker records a lien notice pursuant to this
 1017 section and the claimed commission is paid or the lien notice is
 1018 otherwise discharged or satisfied pursuant to this part, the
 1019 broker shall, within 7 days after the commission is paid or the
 1020 lien notice is otherwise discharged or satisfied, record a
 1021 written release of the lien notice in the public records of the
 1022 county where the lien notice was recorded.

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1023 (8) (a) Except as provided in paragraph (b), a lien notice
 1024 recorded by a broker under this part for a claimed commission
 1025 expires 2 years after the date of recording, unless within that
 1026 time the broker commences an action to foreclose the lien under
 1027 s. 475.809 and records a notice of lis pendens in the public
 1028 records of the county where the lien notice was recorded.

1029 (b) To the extent that a lien notice recorded by a broker
 1030 under this part claims an automatic renewal commission that is
 1031 earned but not then payable, the lien notice expires 10 years
 1032 after the date of recording, unless within that time the broker
 1033 commences an action to foreclose the lien under s. 475.809 and
 1034 records a notice of lis pendens in the public records of the
 1035 county where the lien notice was recorded. If the brokerage
 1036 agreement remains effective, the broker may extend the
 1037 expiration date of a lien notice for an automatic renewal
 1038 commission by recording an extension notice in the same public
 1039 records within the last 6 months before such expiration date. An
 1040 extension notice shall refer to the recording information of the
 1041 original lien notice, shall state that the brokerage agreement
 1042 remains effective, and shall include the same information and be
 1043 executed in the same manner as required by s. 475.805(1) for the
 1044 original lien notice. A timely recorded extension notice shall
 1045 extend the expiration date of the original recorded lien notice
 1046 by 10 additional years. Successive extension notices may be
 1047 recorded for so long as the brokerage agreement remains
 1048 effective between the broker and the owner. Within 10 days after
 1049 recording an extension notice, the broker shall deliver a copy
 1050 thereof to the owner.

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1051 (c) The owner or the owner's agent or attorney may elect
 1052 to shorten the time within which the broker shall commence an
 1053 action to foreclose a lien under s. 475.809, or to enforce a
 1054 claim against a transfer bond or other security under s.
 1055 475.811, by recording in the clerk's office a notice of contest
 1056 in substantially the following form:

1057
 1058 NOTICE OF CONTEST OF BROKER'S LIEN

1059
 1060 To: (Name and address of broker)

1061 You are notified that the undersigned contests the lien notice
 1062 filed by you on _____, (year), and recorded in Official
 1063 Records Book _____, Page _____, of the public records of
 1064 _____ County, Florida, and that the time within which
 1065 you may file suit to enforce your lien is limited to 60 days
 1066 from the date of service of this notice. This _____ day of
 1067 _____, (year) .

1068
 1069 Signed: (Owner or Attorney)

1070
 1071 The lien of any broker upon whom such a notice of contest is
 1072 served and who fails to institute a suit to enforce the lien
 1073 within 60 days after service of such notice of contest shall be
 1074 extinguished automatically. The clerk shall mail a copy of the
 1075 notice of contest to the broker at the address shown in the lien
 1076 notice or most recent amendment thereto and shall certify to
 1077 such service on the face of the notice of contest and record the

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1078 notice of contest. Service of the notice of contest by the clerk
 1079 shall be deemed complete upon mailing.

1080 475.809 Foreclosure of lien; civil action by owner; award
 1081 of costs and attorney's fees.--

1082 (1) A broker may enforce a lien for a commission that is
 1083 earned and payable under this part by a foreclosure suit in the
 1084 same manner as if the lien notice were a mortgage recorded
 1085 against the commercial real estate of the owner obligated to pay
 1086 the claimed commission. The foreclosure shall be commenced in
 1087 the county court or circuit court, whichever may have
 1088 jurisdiction of controversies in the amount of the claimed
 1089 commission, of the county where the lien notice was recorded.
 1090 The foreclosure action shall be commenced before the lien notice
 1091 expires or is extinguished under s. 475.807(8), otherwise the
 1092 lien notice shall become null and void and have no further force
 1093 or effect.

1094 (2) If a lien notice is recorded pursuant to s. 475.807
 1095 and the owner disputes the claimed commission, the owner may
 1096 file a civil action seeking to discharge the lien in the county
 1097 court or circuit court, whichever may have jurisdiction of
 1098 controversies in the amount of the claimed commission, of the
 1099 county where the lien notice was recorded.

1100 (3) In any action to foreclose a lien or to discharge a
 1101 lien pursuant to this section, the prevailing party shall be
 1102 awarded costs and reasonable attorney's fees.

1103 475.811 Transfer of lien to security.--

1104 (1) (a) Any lien claimed by a broker by recording a lien
 1105 notice under this part may be transferred by any person having

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1106 an interest in the commercial real estate upon which the lien is
1107 imposed from such commercial real estate to other security by
1108 either:

1109 1. Depositing in the clerk's office a sum of money; or
1110 2. Filing in the clerk's office a bond executed as surety
1111 by a surety insurer licensed to do business in this state,
1112 either to be in an amount equal to the amount claimed in the
1113 lien notice, plus interest thereon at the legal rate for 3
1114 years, plus \$1,000 or 25 percent of the amount demanded in the
1115 lien notice, whichever is greater, to apply on any attorney's
1116 fees and court costs that may be taxed in any proceeding to
1117 enforce said lien.

1118 (b) Such deposit or bond shall be conditioned to pay any
1119 judgment or decree that may be rendered for the satisfaction of
1120 the lien for which such lien notice was recorded. Upon making
1121 such deposit or filing such bond, the clerk shall make and
1122 record a certificate showing the transfer of the lien from the
1123 commercial real estate to the security and shall mail a copy
1124 thereof by registered or certified mail to the broker named in
1125 the lien notice at the address stated therein. Upon filing the
1126 certificate of transfer the commercial real estate shall
1127 thereupon be released from the lien claimed and such lien shall
1128 be transferred to said security. Subject to any order of the
1129 court increasing the amount required for the lien transfer
1130 deposit or bond, no other judgment or decree to pay money may be
1131 entered by the court against the owner on account of the
1132 commission claimed in the lien notice. The clerk shall be
1133 entitled to a service charge for making and serving the

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1134 certificate, in the amount of up to \$15. If the transaction
 1135 involves the transfer of multiple liens, an additional charge of
 1136 up to \$7.50 for each additional lien shall be charged. For
 1137 recording the certificate and approving the bond, the clerk
 1138 shall receive her or his usual statutory service charges as
 1139 prescribed in s. 28.24. Any number of liens may be transferred
 1140 to one such security.

1141 (2) Any excess of the security over the aggregate amount
 1142 of any judgments or decrees rendered plus costs actually taxed
 1143 shall be repaid to the party filing the security or her or his
 1144 successor in interest. Any deposit of money shall be considered
 1145 as paid into court and shall be subject to the provisions of law
 1146 relative to payments of money into court and the disposition of
 1147 same.

1148 (3) In any action pending under s. 475.809 to foreclose or
 1149 discharge a lien any party having an interest in such security
 1150 or the commercial real estate from which the lien was
 1151 transferred may at any time and any number of times file a
 1152 motion for an order to require additional security, reduction of
 1153 security, change or substitution of sureties, payment of
 1154 discharge thereof, or any other matter affecting said security.
 1155 If the court finds that the amount of the deposit or bond in
 1156 excess of the amount claimed in the lien notice is insufficient
 1157 to pay the broker's attorney's fees and court costs incurred in
 1158 the action to enforce the lien, the court shall increase the
 1159 amount of the cash deposit or lien transfer bond.

1160 (4) If a proceeding to enforce a transferred lien is not
 1161 commenced within the time specified in s. 475.809 or if it

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1162 appears that the transferred lien has been satisfied of record,
 1163 the clerk shall return said security upon request of the person
 1164 depositing or filing the same, or the insurer.

1165 475.813 Subordination of lien.--

1166 (1) Nothing contained in this part precludes a broker from
 1167 agreeing to subordinate a lien claimed by the broker under this
 1168 part in favor of the holder of any mortgage or other lien
 1169 against the owner's interest in the commercial real estate that
 1170 is subject to the broker's lien.

1171 (2) With or without the consent of the broker, the owner
 1172 may subordinate a lien claimed by the broker for an automatic
 1173 renewal commission in favor of the holder of a subsequent
 1174 mortgage encumbering the owner's interest in the commercial real
 1175 estate. The subordination instrument described in this
 1176 subsection shall be made in writing and shall be recorded by the
 1177 owner in the public records of the same county where the
 1178 broker's lien notice was recorded.

1179 (3) A broker's lien notice recorded against commercial
 1180 real estate under this part is subordinate to any mortgage that
 1181 has at any time secured any purchase money indebtedness,
 1182 provided that the mortgage is made by the owner of the
 1183 commercial real estate in favor of a person unrelated to the
 1184 owner. This subordination provision affects only the relative
 1185 priority of the broker's lien notice and the mortgage with
 1186 respect to each other, and this provision does not affect their
 1187 relative priority with respect to any other mortgage, lien,
 1188 encumbrance, or other matter affecting the title to the
 1189 commercial real estate.

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1190 Section 3. Paragraph (j) of subsection (1) of section
1191 475.42, Florida Statutes, is amended to read:
1192 475.42 Violations and penalties.--
1193 (1) VIOLATIONS.--
1194 (j) A broker or sales associate may not place, or cause to
1195 be placed, upon the public records of any county, any contract,
1196 assignment, deed, will, mortgage, affidavit, or other writing
1197 which purports to affect the title of, or encumber, any real
1198 property if the same is known to her or him to be false, void,
1199 or not authorized to be placed of record, or not executed in the
1200 form entitling it to be recorded, or the execution or recording
1201 whereof has not been authorized by the owner of the property,
1202 maliciously or for the purpose of collecting a commission, or to
1203 coerce the payment of money to the broker or sales associate or
1204 other person, or for any unlawful purpose. However, nothing in
1205 this paragraph shall be construed to prohibit a broker or a
1206 sales associate from recording a judgment rendered by a court of
1207 this state or to prohibit a broker from placing a lien on a
1208 property where expressly permitted by contractual agreement or
1209 otherwise allowed by law.
1210 Section 4. This act shall take effect October 1, 2005.