

Bill No. SB 2036

Barcode 322466

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Posey) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

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

475.701 Definitions.--As used in this part:

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

(2) "Brokerage agreement" means a written contract entered into on or after the effective date of this act between an owner of commercial real estate and a broker that obligates the owner to pay a commission to the broker for licensed services provided by the broker relating to the sale

Bill No. SB 2036

Barcode 322466

1 or disposition of the commercial real estate as specified in  
2 the contract.

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

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

9 (5) "Commercial real estate" means a fee simple  
10 interest or other possessory estate in real property, except  
11 an interest in real property that is:

12 (a) Improved with one single-family residential unit  
13 or one multifamily structure containing one to four  
14 residential units;

15 (b) Unimproved and the maximum permitted development  
16 is one to four residential units under any restrictive  
17 covenants, zoning regulations, or comprehensive plan  
18 applicable to that real property; or

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

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

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

30 (8) "Days" means calendar days, but if a period would  
31 end on a day other than a business day, then the last day of

Bill No. SB 2036

Barcode 322466

1 that period shall instead be the next business day.

2 (9) "Disposition" means a voluntary conveyance or  
3 transfer of the title to or other ownership interest in any  
4 commercial real estate specified in a brokerage agreement. A  
5 disposition does not include a transfer pursuant to a  
6 foreclosure sale and does not include a lease.

7 (10) "Disputed reserved proceeds" means the portion of  
8 the owner's net proceeds reserved by a closing agent under s.  
9 475.709 which the owner disputes the broker's right to receive  
10 such reserved proceeds under s. 475.709(5).

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

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

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

22 (b) Any costs incurred by the owner to close the  
23 disposition, including, but not limited to, real estate  
24 transfer tax, title insurance premiums, ad valorem taxes and  
25 assessments, and escrow fees payable by the owner pursuant to  
26 an agreement with the buyer.

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

30 475.703 Broker's lien for sales commission.--

31 (1) A broker has a lien upon the owner's net proceeds

Bill No. SB 2036

Barcode 322466

1 from the disposition of commercial real estate for any  
 2 commission earned by the broker with respect to that  
 3 disposition pursuant to a brokerage agreement. The lien upon  
 4 the owner's net proceeds pursuant to this part for a broker's  
 5 commission is a lien upon personal property, attaches to the  
 6 owner's net proceeds only, and does not attach to any interest  
 7 in real property.

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

10 (a) An event occurs under the brokerage agreement  
 11 which defines when the commission is earned; or

12 (b) The owner enters into a contract for the  
 13 disposition of all or part of the commercial real estate  
 14 specified in the brokerage agreement, provided that a  
 15 commission would be payable to the broker pursuant to the  
 16 brokerage agreement if the disposition occurs under that  
 17 contract.

18 (3) For the purposes of this part, a commission is  
 19 payable at the time provided in the brokerage agreement. If  
 20 payment of the commission is conditioned on the occurrence of  
 21 an event and that event does not occur, a broker may not  
 22 enforce a lien for that commission under this part.

23 (4) A broker's lien for commission arising under this  
 24 part:

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

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

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

31 (d) Cannot be waived by any person other than the

Bill No. SB 2036

Barcode 322466

1 broker, regardless of whether that person may execute and bind  
2 the broker to a brokerage agreement.

3 (5) A broker shall disclose to the owner at or before  
4 the time the owner executes the brokerage agreement that this  
5 part creates lien rights for a commission earned by the broker  
6 that are not waivable before the commission is earned by the  
7 broker. A broker may not enforce a lien under this part for a  
8 commission earned under a brokerage agreement for which the  
9 disclosure required by this subsection was not made. A  
10 disclosure in substantially the following form shall be  
11 sufficient: "The Florida Commercial Real Estate Sales  
12 Commission Lien Act provides that when a broker has earned a  
13 commission by performing licensed services under a brokerage  
14 agreement with you, the broker may claim a lien against your  
15 net sales proceeds for the broker's commission. The broker's  
16 lien rights under the act cannot be waived before the  
17 commission is earned."

18 475.705 Contents of commission notice; delivery to  
19 owner and closing agent.--

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

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

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

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

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

Bill No. SB 2036

Barcode 322466

1       (e) The amount of the commission claimed by the  
 2 broker, which may be stated in a dollar amount or may be  
 3 stated in the form of a formula determining the amount, such  
 4 as a percentage of the sales price.

5       (f) A statement under penalty of perjury that the  
 6 broker has read the commission notice, knows its contents,  
 7 believes the same to be true and correct, and makes the  
 8 commission claim pursuant to the brokerage agreement described  
 9 in the notice.

10       (g) A statement that the commission notice or a copy  
 11 thereof has been delivered to the owner and that the  
 12 commission notice may be recorded in the public records of the  
 13 county or counties where the commercial real estate is  
 14 located.

15       (h) A statement that this part provides that if the  
 16 owner disputes the claimed commission the owner shall notify  
 17 the closing agent of such dispute not later than 5 days after  
 18 the closing or the owner will be deemed to have confirmed the  
 19 commission and this part will require the closing agent to pay  
 20 the commission to the broker from the owner's net proceeds  
 21 from the disposition of the commercial real estate.

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

24  
 25                   BROKER'S COMMISSION NOTICE UNDER  
 26                   FLORIDA COMMERCIAL REAL ESTATE SALES COMMISSION LIEN ACT  
 27  
 28 Notice is hereby given pursuant to the Florida Commercial Real  
 29 Estate Sales Commission Lien Act, part III of chapter 475,  
 30 Florida Statutes (the "act"), that the undersigned real estate  
 31 broker is entitled to receive a sales commission in the amount

Bill No. SB 2036

Barcode 322466

1 set forth below from the owner named below pursuant to the  
 2 terms of a written brokerage commission agreement regarding  
 3 the commercial real estate described below, and the  
 4 undersigned broker claims a lien under the act against the  
 5 owner's net proceeds from the disposition of the commercial  
 6 real estate. The act and this commission notice do not create  
 7 a lien against the commercial real estate itself, but only  
 8 against the owner's net proceeds.

9

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

11 \_\_\_\_\_

12 2. Legal description of the commercial real estate:

13 \_\_\_\_\_

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

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 4. Effective date of the written brokerage commission  
 20 agreement between the owner and the broker under which the  
 21 commission is or will be payable: \_\_\_\_\_, \_\_\_\_\_

22 5. Amount of commission claimed by the undersigned broker:

23 \$ \_\_\_\_\_, or

24 \_\_\_\_\_ percent of sales price, or

25 [specify other formula for determination of commission  
 26 amount]:

27 \_\_\_\_\_.

28 6. The undersigned broker, under penalty of perjury, hereby  
 29 swears or affirms that the undersigned broker has read this  
 30 commission notice, knows its contents and believes the same to  
 31 be true and correct, and that the undersigned broker is making

Bill No. SB 2036

Barcode 322466

1 this commission claim pursuant to the written brokerage  
2 commission agreement described in this commission notice.

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

5  
6 Signed: \_\_\_\_\_ (broker)

7  
8 Signed and sworn to or affirmed under penalty of perjury  
9 before me, a notary public, this \_\_\_\_\_ day of \_\_\_\_\_,  
10 by \_\_\_\_\_

11 Signed: \_\_\_\_\_ (notary public)

12 WARNING TO OWNER: The act provides that if you dispute the  
13 commission claimed in this commission notice, you must notify  
14 the closing agent of the dispute no later than 5 days after  
15 the closing. If you fail to notify the closing agent before  
16 that date that you dispute the commission, you will be deemed  
17 to have confirmed the commission and the act will require the  
18 closing agent to pay the commission to the broker from your  
19 net proceeds from the disposition of the commercial real  
20 estate.

21  
22 This commission notice may be recorded in the public records  
23 of the county or counties where the commercial real estate is  
24 located.

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

30 (a) The owner of the commercial real estate specified  
31 in the brokerage agreement.



Bill No. SB 2036

Barcode 322466

1       (b) The closing agent designated to close the  
 2 transaction for the disposition of the commercial real estate,  
 3 if the broker then knows the identity of the closing agent. If  
 4 the identity of the closing agent thereafter becomes known to  
 5 the broker, then the broker shall deliver a copy of the  
 6 commission notice to the closing agent within 3 days after the  
 7 broker acquires such knowledge and at least 1 day before the  
 8 closing.

9       (4) Except as provided in this subsection, a broker  
 10 who fails to deliver a copy of a commission notice as required  
 11 under subsection (3) within the period specified therein may  
 12 not enforce a lien for the commission under this part. If a  
 13 broker fails to deliver a copy of the commission notice within  
 14 said period solely because the owner entered into a contract  
 15 for the disposition of the commercial real estate without the  
 16 knowledge of the broker, the broker may enforce a lien for the  
 17 commission under this part if:

18       (a) The copy of the commission notice is delivered to  
 19 the owner and the closing agent before the closing agent  
 20 disburses the owner's net proceeds to the owner.

21       (b) The broker executes and delivers to the closing  
 22 agent a sworn affidavit stating that the copy of the  
 23 commission notice was not delivered within the time period  
 24 specified in subsection (3) solely because the owner entered  
 25 into a contract for the disposition of the commercial real  
 26 estate without the knowledge of the broker.

27  
 28 Notwithstanding the provisions of this subsection, a broker  
 29 who fails to deliver a copy of a commission notice to the  
 30 owner and the closing agent before the disbursement of the  
 31 owner's net proceeds may not enforce a lien for the commission

Barcode 322466

1 under this part, and the delivery of a copy of a commission  
2 notice after such disbursement is ineffective under this part.

3 475.707 Recording commission notice; effectiveness.--

4 (1) After a broker delivers the copies of a commission  
5 notice as provided in s. 475.705, the broker may record the  
6 commission notice in the public records maintained by the  
7 clerk of court in the county or counties in which the  
8 commercial real estate is located.

9 (a) Subject to the limitation in paragraph (b), the  
10 broker's lien created by this part against the owner's net  
11 proceeds is perfected by such recording of the commission  
12 notice and takes priority pursuant to this part as of the date  
13 of the recording of the commission notice. The priority of the  
14 lien does not relate back to the date of the brokerage  
15 agreement.

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

19 (2) A recorded commission notice is effective under  
20 this part only with respect to dispositions made by the owner  
21 named in the commission notice, and, after the recordation of  
22 a deed from the owner conveying the commercial real estate  
23 specified in the commission notice to a bona fide purchaser  
24 for value, the commission notice is ineffective with respect  
25 to any subsequent dispositions of that commercial real estate.

26 (3) A commission notice recorded under this part  
27 expires 1 year after the date of recording, unless the  
28 brokerage agreement remains effective after the expiration  
29 date of the commission notice and the broker records an  
30 extension notice in the same public records within the last 60  
31 days before such expiration date. An extension notice shall

Bill No. SB 2036

Barcode 322466

1 refer to the recording information of the original commission  
2 notice, shall state that the brokerage agreement remains  
3 effective, and shall include the information and be executed  
4 in the manner required by s. 475.705(1) for the original  
5 commission notice. A timely recorded extension notice shall  
6 extend the expiration date of the original recorded commission  
7 notice by 1 additional year. Successive extension notices may  
8 be recorded for so long as the brokerage agreement remains  
9 effective between the broker and the owner. Within 10 days  
10 after recording an extension notice the broker shall deliver a  
11 copy thereof to the owner.

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

17 (5) Whenever a commission notice is recorded and a  
18 condition or event occurs or fails to occur that would  
19 preclude the broker from receiving the claimed commission  
20 under the terms of the brokerage agreement, including the  
21 filing of a commission notice in a manner that does not comply  
22 with this part, the broker shall, within 7 days following  
23 demand by the owner, record a written release of the  
24 commission notice in the public records of the county where  
25 the commission notice was recorded.

26 (6) If a broker records a commission notice pursuant  
27 to this section and the claimed commission is paid or the  
28 commission notice is otherwise discharged or satisfied  
29 pursuant to this part, the broker shall, within 7 days after  
30 the commission is paid or the commission notice is otherwise  
31 discharged or satisfied, record a written release of the

Bill No. SB 2036

Barcode 322466

1 commission notice in the public records of the county where  
2 the commission notice was recorded.

3 475.709 Duties of closing agent; reservation of  
4 owner's net proceeds.--

5 (1)(a) The closing agent shall reserve from the  
6 owner's net proceeds an amount equal to the commission claimed  
7 by the broker in the commission notice if, before the closing  
8 agent disburses the owner's net proceeds from the closing of a  
9 disposition of commercial real estate:

10 1. A commission notice pertaining to the commercial  
11 real estate is delivered to the closing agent in accordance  
12 with s. 475.705;

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

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

21 (b) If the owner's net proceeds are insufficient to  
22 pay the full amount of the claimed commission, the closing  
23 agent shall reserve the entire amount of the owner's net  
24 proceeds. The closing agent shall release the reserved  
25 proceeds only in accordance with the provisions of this part.

26 (2)(a) The closing agent designated to close a  
27 transaction for the disposition of commercial real estate may  
28 require the owner of the commercial real estate to deliver a  
29 sworn affidavit identifying the commercial real estate and  
30 disclosing to the closing agent:

31 1. Whether the owner is a party to any brokerage

Bill No. SB 2036

Barcode 322466

1 agreement under which any broker or brokers may have a right  
2 to claim a commission from the disposition of the commercial  
3 real estate.

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

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

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

13 (b) If the closing agent receives an affidavit from  
14 the owner under this subsection disclosing that any commission  
15 may be claimed from the disposition of the commercial real  
16 estate, regardless of whether the owner confirms or disputes  
17 the commission, the closing agent shall reserve from the  
18 owner's net proceeds an amount equal to the total commission  
19 amount disclosed by the owner in the affidavit. Upon request  
20 by a broker who has a brokerage agreement with the owner  
21 covering the commercial real estate identified in the owner's  
22 affidavit, the closing agent shall deliver a copy of the  
23 affidavit to the broker. If the owner's net proceeds are  
24 insufficient to pay the full amount of the commission so  
25 disclosed, the closing agent shall reserve the entire amount  
26 of the owner's net proceeds. If the owner's affidavit  
27 discloses a commission amount that is different from the  
28 commission amount required to be reserved under subsection  
29 (1), the closing agent shall reserve the greater of the two  
30 commission amounts. The closing agent shall release the  
31 reserved proceeds only in accordance with the provisions of

1 this part.

2       (3) If the provisions of subsection (1) do not require  
3 the closing agent to reserve against the owner's net proceeds  
4 on account of a commission notice pertaining to the commercial  
5 real estate, and if the closing agent receives an owner's  
6 affidavit pursuant to subsection (2) stating that the owner is  
7 not a party to any brokerage agreement under which any  
8 commission may be claimed from the disposition of the  
9 commercial real estate, the closing agent has no duty under  
10 this part to reserve any money or property for a commission  
11 from the owner's net proceeds from the disposition of the  
12 commercial real estate.

13       (4) If the closing agent determines that the owner's  
14 net proceeds from a disposition of commercial real estate are  
15 insufficient to pay the full amount of the commission claimed  
16 in a commission notice or disclosed in an owner's affidavit,  
17 the closing agent shall, within 3 days after making that  
18 determination but no later than the closing of the  
19 disposition, notify the owner and the broker of the  
20 determination. The closing agent's determination that the  
21 owner's net proceeds are insufficient under this part,  
22 however, does not relieve the owner from the owner's  
23 contractual obligations under the brokerage agreement to pay  
24 the full commission owing to the broker.

25       (5) If the owner confirms that a commission is payable  
26 to the broker, at the closing of the disposition of the  
27 commercial real estate the closing agent shall release to the  
28 broker the confirmed amount of the commission from the  
29 reserved proceeds. A settlement statement executed by the  
30 owner and showing the payment of a commission to the broker is  
31 confirmation by the owner of the commission amount shown on

Bill No. SB 2036

Barcode 322466

1 the settlement statement. If the owner disputes the broker's  
2 right to receive all or any portion of the claimed commission,  
3 the closing agent shall release to the broker from the  
4 reserved proceeds only the undisputed portion of the  
5 commission, if any. Until the rights of the owner and the  
6 broker with respect to the disputed reserved proceeds are  
7 determined pursuant to s. 475.711 or s. 475.713 or the owner  
8 and the broker otherwise agree in writing, the closing agent  
9 shall not release the disputed reserved proceeds to any person  
10 other than to deposit the same in the registry of the court  
11 having jurisdiction of the dispute.

12 (6) The commission claimed in the commission notice  
13 shall be deemed confirmed by the owner and the closing agent  
14 shall release the reserved proceeds to the broker, if the  
15 closing agent is required pursuant to subsection (1) to  
16 reserve any or all of the owner's net proceeds, and if:

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

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

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

23 (7) If the owner's net proceeds consist in whole or in  
24 part of a purchase-money note, and if the money portion of the  
25 owner's net proceeds is insufficient to pay the full amount of  
26 the commission claimed, the broker's lien under this part for  
27 the portion of the commission not paid from the money proceeds  
28 shall attach to the purchase-money note and any security  
29 therefor, and the closing agent shall reserve and release the  
30 purchase-money note in accordance with this part in the same  
31 manner as the money portion of the reserved proceeds. If the

Bill No. SB 2036

Barcode 322466

1 owner and the broker are unable to agree within 5 days after  
 2 the closing regarding the closing agent's release of the  
 3 purchase-money note, the closing agent shall interplead the  
 4 purchase-money note along with any reserved proceeds in  
 5 accordance with s. 475.711.

6 (8) If the disposition of the commercial real estate  
 7 is part of a like-kind exchange by the owner which is deferred  
 8 from federal income tax under section 1031 of the Internal  
 9 Revenue Code of 1986, as amended, and if all of the owner's  
 10 net proceeds in excess of undisputed commissions shall be  
 11 delivered to a third party in order to qualify the disposition  
 12 for such tax deferral treatment, the owner may substitute  
 13 other cash, a surety bond, an unconditional letter of credit,  
 14 or other liquid security acceptable to the broker in lieu of  
 15 any disputed reserved proceeds held by the closing agent under  
 16 this section or deposited in the court registry in accordance  
 17 with s. 475.711.

18 (9) Upon request of the closing agent or the owner,  
 19 any broker who has recorded a commission notice under s.  
 20 475.707 shall submit a satisfaction or release of the  
 21 commission notice in recordable form to the closing agent to  
 22 be held in escrow pending the closing and the closing agent's  
 23 release to the broker of the portion of the owner's net  
 24 proceeds reserved by the closing agent under this section. The  
 25 closing agent is authorized to deduct from the reserved  
 26 proceeds payable to the broker the cost of recording the  
 27 satisfaction or release of the commission notice.

28 (10) Neither the closing agent's requirement for an  
 29 owner's affidavit pursuant to subsection (2), nor the closing  
 30 agent's reservation of any portion of an owner's net proceeds  
 31 pursuant to subsections (1) or (2), shall relieve the owner of



Barcode 322466

1 the owner's obligation to close the transaction for the  
 2 disposition of the commercial real estate, including, without  
 3 limitation, any obligation of the owner to the buyer under the  
 4 purchase and sale contract to discharge mortgages, liens, or  
 5 encumbrances against the commercial real estate which were  
 6 recorded after the commission notice and therefore are not  
 7 subtracted from gross sales proceeds when computing the  
 8 owner's net proceeds under s. 475.719.

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

13       (12) No provision of this part shall require a closing  
 14 agent to serve involuntarily more than 5 days after a closing  
 15 as an escrow agent or stakeholder for any moneys or other  
 16 property that are disputed by the owner and the broker under  
 17 the provisions of this part.

18       475.711 Interpleader or other proceedings; deposit of  
 19 reserved proceeds in court registry; discharge of closing  
 20 agent from further liability.--

21       (1) The closing agent shall, by interpleader action or  
 22 other legal proceeding, seek adjudication of the rights of the  
 23 parties with respect to disputed reserved proceeds by the  
 24 county court or circuit court, whichever may have jurisdiction  
 25 of controversies in the amount of the disputed reserved  
 26 proceeds, in a county where all or a portion of the commercial  
 27 real estate is located if, after the closing of a transaction  
 28 for the disposition of the commercial real estate:

29       (a) The closing agent has reserved all or a portion of  
 30 the owner's net proceeds pursuant to s. 475.709 and the owner  
 31 disputes the release to the broker of all or any portion of

Bill No. SB 2036

Barcode 322466

1 the reserved proceeds.

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

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

8 (2) Unless otherwise agreed to by the owner and the  
9 broker in writing, the closing agent shall deposit the net  
10 amount of disputed reserved proceeds in the registry of the  
11 court having jurisdiction of any legal action or proceeding to  
12 determine the rights of the parties in the disputed reserved  
13 proceeds, whether commenced by the closing agent under  
14 subsection (1) or commenced by the owner or the broker under  
15 s. 475.713 or otherwise. The closing agent shall determine the  
16 net amount of disputed reserved proceeds deposited in the  
17 court registry by deducting from the disputed reserved  
18 proceeds:

19 (a) Any costs incurred by the closing agent to  
20 commence such action or proceeding, or to appear in any such  
21 action or proceeding commenced by the owner or the broker,  
22 including reasonable attorney's fees.

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

25 (c) The service charges of the clerk of court under s.  
26 28.24 for receiving the net amount of such disputed reserved  
27 proceeds into the registry of the court.

28 (3) If a commission notice has been recorded in the  
29 public records of the county or counties where the commercial  
30 real estate is located, upon depositing the net disputed  
31 reserved proceeds with the clerk of court pursuant to

Bill No. SB 2036

Barcode 322466

1 subsection (2), the closing agent shall execute and record an  
2 affidavit referring to the recorded commission notice and  
3 stating that the net disputed reserved proceeds have been so  
4 deposited in accordance with this part. The recording of the  
5 affidavit shall operate to release the recorded commission  
6 notice.

7 (4) If a closing agent deposits the net disputed  
8 reserved proceeds with the clerk of court pursuant to  
9 subsection (2), the closing agent is discharged from any  
10 further liability or responsibility concerning the disputed  
11 reserved proceeds.

12 475.713 Civil action concerning commission; order to  
13 show cause; hearing; release of proceeds; award of costs and  
14 attorney's fees.--

15 (1) If a commission notice claiming a commission is  
16 delivered to an owner pursuant to s. 475.705 and the owner  
17 disputes the claimed commission, the owner or the broker may  
18 file a civil action concerning the commission claim in the  
19 county court or circuit court, whichever has jurisdiction of  
20 controversies in the amount of the claimed commission, of the  
21 county where the commercial real estate or a portion of the  
22 commercial real estate is located.

23 (2) In a civil action by the owner, at the time the  
24 summons is issued or at any time before the complaint is  
25 answered by the broker, the owner may apply to the court for  
26 an order directing the broker to appear before the court at a  
27 time not earlier than 7 days or later than 15 days after the  
28 date of service of the motion and order on the broker to show  
29 cause why the commission claim should not be dismissed. The  
30 motion must state the grounds upon which relief is sought and  
31 must be supported by the affidavit of the owner setting forth

Bill No. SB 2036

Barcode 322466

1 a concise statement of the facts upon which the motion is  
 2 based. The order to show cause shall clearly state that if the  
 3 broker fails to appear at the time and place specified in the  
 4 order, the broker's claim of lien against the owner's net  
 5 proceeds under this part shall be released, with prejudice,  
 6 and the broker shall be ordered to pay the costs incurred by  
 7 the owner and the closing agent, including reasonable  
 8 attorney's fees.

9       (3) The court shall issue an order releasing the  
 10 broker's claim of lien against the owner's net proceeds from  
 11 such disposition, discharging any commission notice that may  
 12 be have been recorded, ordering the release to the owner of  
 13 the disputed reserved proceeds, and awarding costs and  
 14 reasonable attorney's fees to the owner to be paid by the  
 15 broker if, following a hearing, the court determines that the  
 16 owner is not a party to a brokerage agreement that will result  
 17 in the owner being obligated to pay the broker the claimed  
 18 commission or any portion thereof with respect to the  
 19 disposition of the commercial real estate identified in the  
 20 commission notice. If the court determines that the owner is a  
 21 party to a brokerage agreement that will result in the owner  
 22 being obligated to pay the broker the claimed commission or  
 23 any portion thereof with respect to the disposition of the  
 24 commercial real estate identified in the commission notice,  
 25 the court shall issue an order so stating, ordering the  
 26 release to the broker of the disputed reserved proceeds or  
 27 such portion thereof to which the court determines that the  
 28 broker is entitled, and awarding costs and reasonable  
 29 attorney's fees to the broker to be paid by the owner. Such  
 30 orders are final judgments.

31       (4) A certified copy of any order issued by the court

Bill No. SB 2036

Barcode 322466

1 pursuant to subsection (3) discharging a recorded commission  
2 notice shall be recorded at the expense of the broker in the  
3 public records where the commission notice was recorded, and  
4 such order shall operate as a cancellation of the recorded  
5 commission notice.

6 (5)(a) In a civil action commenced by the owner or the  
7 broker under this section or in an interpleader action or  
8 other proceeding commenced by the closing agent under s.  
9 475.711, the owner or the broker that is not the prevailing  
10 party shall be required to pay:

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

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

15 3. The amount of any costs, recording charges, and  
16 service charges of the clerk of court that were deducted from  
17 the disputed reserved proceeds under s. 475.711(2) in  
18 determining the net amount thereof deposited into the registry  
19 of the court.

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

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

27 475.715 Priority of recorded commission notice.--All  
28 statutory liens, consensual liens, mortgages, deeds of trust,  
29 assignments of rents, and other encumbrances, including all  
30 advances or charges made or accruing thereunder, whether  
31 voluntary or obligatory, and all modifications, extensions,

Bill No. SB 2036

Barcode 322466

1 renewals, and replacements thereof, recorded prior to the  
2 recording of a commission notice pursuant to the provisions of  
3 s. 475.707, have priority over the commission notice, and the  
4 amount required to discharge such prior recorded liens shall  
5 be subtracted from gross sales proceeds in computing the  
6 owner's net proceeds unless the buyer permits the same to  
7 remain a lien against the title to the commercial real estate.  
8 A prior recorded lien includes, without limitation, a valid  
9 construction lien claim that is recorded after the recording  
10 of the broker's commission notice but which relates back to a  
11 notice of commencement recorded under s. 713.13 prior to the  
12 recording date of the broker's commission notice.

13 475.717 Service of notice.--Notices to be delivered to  
14 a party pursuant to this part other than service of process as  
15 required in civil actions shall be by service of process, by  
16 registered or certified mail with return receipt requested, or  
17 by personal or electronic delivery and obtaining evidence of  
18 delivery in the form of a receipt or other paper or electronic  
19 acknowledgment by the party to whom the notice is delivered.  
20 Delivery is effective at the time of personal service,  
21 personal or electronic delivery, or 3 days following deposit  
22 in the mail as required by this section. Notice to a broker or  
23 owner may be given to the address of the broker or owner that  
24 is contained in the brokerage agreement or such other address  
25 as is contained in a written notice from the broker or owner  
26 to the party giving the notice. If no address is provided in  
27 the brokerage agreement, the notice to the broker may be given  
28 to the broker's address contained in the commission notice.  
29 Notice to a closing agent shall be addressed to the individual  
30 responsible for the closing if the person sending the notice  
31 knows that individual's name.

Bill No. SB 2036

Barcode 322466

1           475.719 Buyer's broker.--As used in this section, the  
 2 term "buyer's broker" means a broker that is entitled to  
 3 receive payment from the buyer of commercial real estate of  
 4 any fee or other compensation for licensed services, as  
 5 specified in a written contract made between the buyer and the  
 6 broker on or after the effective date of this act relating to  
 7 the buyer's purchase of the commercial real estate.

8           (1) A written contract between a buyer and a buyer's  
 9 broker for the payment by the buyer of any fee or other  
 10 compensation to the buyer's broker for licensed services  
 11 relating to the sale or disposition of commercial real estate  
 12 to the buyer is not a brokerage agreement with the owner under  
 13 this part, and the buyer's broker is not entitled under this  
 14 part to record any commission notice, to claim any lien  
 15 against commercial real estate, or to claim any lien against  
 16 the owner's net proceeds from the sale or disposition of  
 17 commercial real estate.

18           (2) If an owner enters into a written contract with a  
 19 buyer for the sale or disposition of any commercial real  
 20 estate that will entitle the buyer's broker to receive a fee  
 21 or other compensation from the buyer under the terms of the  
 22 buyer's broker's written contract with the buyer, the buyer's  
 23 broker may give notice of the buyer's broker's right to  
 24 receive such payment to the closing agent, the owner, the  
 25 buyer, or any other party to the sale or disposition or the  
 26 financing thereof, provided that such notice may be given  
 27 without violating any confidentiality provisions contained in  
 28 either such written contract.

29           (3) No such notice given by the buyer's broker  
 30 pursuant to subsection (2) shall constitute a tortious  
 31 interference with the sale or disposition or financing of the

Bill No. SB 2036

Barcode 322466

1 commercial real estate, except this section shall not affect  
2 the rights and remedies otherwise available to the owner, the  
3 buyer, or the buyer's broker under other applicable law.

4 Section 2. Part IV of chapter 475, Florida Statutes,  
5 consisting of sections 475.800, 475.801, 475.803, 475.805,  
6 475.807, 475.809, and 475.811, is created to read:

7 475.800 Short title.--Sections 475.800-475.811 may be  
8 cited as the "Commercial Real Estate Leasing Commission Lien  
9 Act."

10 475.801 Definitions.--As used in this part:

11 (1) "Automatic renewal commission" means a renewal  
12 commission for which the brokerage agreement does not  
13 expressly require the broker to perform any additional  
14 services in order to receive the renewal commission.

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

16 (3) "Brokerage agreement" means a written contract,  
17 entered into on or after the effective date of this act,  
18 between an owner of commercial real estate and a broker that  
19 obligates the owner to pay a commission to the broker for  
20 licensed services provided by the broker relating to the  
21 leasing of the commercial real estate as specified in the  
22 contract.

23 (4) "Commercial real estate" means a fee simple  
24 interest or other possessory estate in real property except an  
25 interest in real property that is:

26 (a) Improved with one single-family residential unit  
27 or one multifamily structure containing one to four  
28 residential units;

29 (b) Unimproved and the maximum permitted development  
30 is one to four residential units under any restrictive  
31 covenants, zoning regulations, or comprehensive plan



Bill No. SB 2036

Barcode 322466

1 applicable to that real property; or

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

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

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

14 (7) "Lease" means a written agreement creating a  
15 relationship of landlord and tenant with respect to commercial  
16 real estate, such that the tenant acquires from the landlord  
17 the right to possess the commercial real estate for a  
18 specified period of time.

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

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

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

29 (11) "Renewal commission" means an additional  
30 commission that may become payable to a broker under a  
31 brokerage agreement if a lease subject to that brokerage

Barcode 322466

1 agreement is later renewed or is later modified to expand the  
2 leased premises or extend the lease term.

3 475.803 Broker's lien for leasing commission.--

4 (1) A broker has a lien upon the owner's interest in  
5 commercial real estate for any commission earned by the broker  
6 pursuant to a brokerage agreement with respect to a lease of  
7 the commercial real estate. If the owner obligated to pay the  
8 commission is the landlord, the broker's lien attaches to the  
9 landlord's interest in the commercial real estate identified  
10 in the brokerage agreement but not to the tenant's leasehold  
11 estate. If the owner obligated to pay the commission is the  
12 tenant, the broker's lien attaches to the tenant's leasehold  
13 estate but not to the landlord's interest in the commercial  
14 real estate.

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

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

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

24 (3) For the purposes of this part, a renewal  
25 commission with respect to a lease renewal or lease  
26 modification is deemed earned when the broker performs all  
27 additional services relating to the lease renewal or lease  
28 modification which are expressly required by the brokerage  
29 agreement. If the brokerage agreement does not expressly  
30 require the broker to perform any additional services in order  
31 to receive the renewal commission, the renewal commission is

Bill No. SB 2036

Barcode 322466

1 an automatic renewal commission and is deemed earned when the  
2 broker first earned a commission for that lease.

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

8 (5) A broker's lien for commission arising under this  
9 part:

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

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

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

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

19 (6) A broker shall disclose to the owner at or before  
20 the time the owner executes the brokerage agreement that this  
21 part creates lien rights for a commission earned by the broker  
22 that are not waivable before the commission is earned by the  
23 broker. A broker may not enforce a lien under this part for a  
24 commission earned under a brokerage agreement for which the  
25 disclosure required by this subsection was not made. A  
26 disclosure in substantially the following form shall be  
27 sufficient: "The Florida Commercial Real Estate Leasing  
28 Commission Lien Act provides that when a broker has earned a  
29 commission by performing licensed services under a brokerage  
30 agreement with you, the broker may claim a lien against your  
31 interest in the property for the broker's commission. The

Barcode 322466

1 broker's lien rights under the act cannot be waived before the  
2 commission is earned."

3 475.805 Contents of lien notice.--

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

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

11 (b) A statement whether the owner obligated to pay the  
12 commission is the landlord or the tenant under the lease for  
13 which the commission is claimed.

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

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

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

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

22 (g) The amount of the commission claimed by the  
23 broker, which may be stated in a dollar amount or may be  
24 stated in the form of a formula determining the amount, such  
25 as a percentage of the rents payable under the lease.

26 (h) A description of the lease sufficient to identify  
27 the lease for which the commission is claimed, including, if  
28 then known to the broker, the names of the landlord and tenant  
29 under the lease, the date of the lease, and the identification  
30 of the leased premises.

31 (i) A statement of whether the broker is claiming an

Bill No. SB 2036

Barcode 322466

1 automatic renewal commission and the amount of such automatic  
2 renewal commission or the formula for computing the same.

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

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

10

11 BROKER'S COMMISSION LIEN NOTICE UNDER  
12 FLORIDA COMMERCIAL REAL ESTATE LEASING COMMISSION LIEN ACT

13

14 Notice is hereby given, pursuant to the Florida Commercial  
15 Real Estate Leasing Commission Lien Act, part IV of chapter  
16 475, Florida Statutes (the "act"), that the undersigned real  
17 estate broker is entitled to receive a leasing commission from  
18 the owner named below pursuant to the terms of a written  
19 brokerage commission agreement regarding a lease of the  
20 commercial real estate described below, and the undersigned  
21 broker claims a lien under the act against the owner's  
22 interest in the commercial real estate in the amount set forth  
23 below.

24 1. Name of the owner who is obligated to pay the commission:  
25 \_\_\_\_\_

26 2. (Check one:) The owner obligated to pay the commission is:  
27 [ ] the landlord under the lease.  
28 [ ] the tenant under the lease.

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

Bill No. SB 2036

Barcode 322466

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\_\_\_\_\_

4. Legal description of the commercial real estate:

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Effective date of the written brokerage commission agreement between the owner and the broker under which the commission is or will be payable: \_\_\_\_\_, \_\_\_\_\_

7. Amount of commission claimed by the undersigned broker:

\$ \_\_\_\_\_, or

\_\_\_\_\_ percent of rents payable under lease, or

[specify other formula for determination of commission amount]: \_\_\_\_\_.

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

Name of landlord: \_\_\_\_\_

Name of tenant: \_\_\_\_\_

Date of lease: \_\_\_\_\_, \_\_\_\_\_

Leased premises: \_\_\_\_\_

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

Yes

No

Bill No. SB 2036

Barcode 322466

1 If yes, specify the amount of such later commission or the  
2 formula for computing the later commission:

3 \_\_\_\_\_

4 10. The expiration date of this lien notice is 2 years after  
5 the date of recording, unless the answer to paragraph 9 is  
6 yes, in which case the expiration date of this lien notice for  
7 the commission described in paragraph 9 is 10 years after the  
8 date of recording.

9 11. The undersigned broker, under penalty of perjury, hereby  
10 swears or affirms that the undersigned broker has read this  
11 lien notice, knows its contents and believes the same to be  
12 true and correct, and that the undersigned broker is making  
13 this commission claim pursuant to the written brokerage  
14 commission agreement described in this lien notice.

15 Signed: \_\_\_\_\_ (broker)

16  
17 Signed and sworn to or affirmed under penalty of perjury  
18 before me, a notary public, this \_\_\_\_\_ day of \_\_\_\_\_,  
19 by \_\_\_\_\_

20 Signed: \_\_\_\_\_ (notary public)

21  
22 475.807 Recording lien notice; effectiveness.--

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

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

Barcode 322466

1 the additional services required for the renewal commission;

2 or

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

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

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

15 (3) The broker's lien created by this part against the  
16 commercial real estate is perfected by such recording of the  
17 lien notice and takes priority under this part as of the date  
18 of the recording of the lien notice. The priority of the lien  
19 notice does not relate back to the date of the brokerage  
20 agreement.

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

25 (5) A recorded lien notice is effective under this  
26 part only with respect to leases made by the owner named in  
27 the lien notice and the lien notice is ineffective with  
28 respect to any leases that are made by:

29 (a) A bona fide purchaser for value of the commercial  
30 real estate;

31 (b) A purchaser at any mortgage foreclosure sale of



Barcode 322466

1 the commercial real estate; or

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

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

12 (7) If a broker records a lien notice pursuant to this  
13 section and the claimed commission is paid or the lien notice  
14 is otherwise discharged or satisfied pursuant to this part,  
15 the broker shall, within 7 days after the commission is paid  
16 or the lien notice is otherwise discharged or satisfied,  
17 record a written release of the lien notice in the public  
18 records of the county where the lien notice was recorded.

19 (8)(a) Except as provided in paragraph (b), a lien  
20 notice recorded by a broker under this part for a claimed  
21 commission expires 2 years after the date of recording, unless  
22 within that time the broker commences an action to foreclose  
23 the lien under s. 475.809 and records a notice of lis pendens  
24 in the public records of the county where the lien notice was  
25 recorded.

26 (b) To the extent that a lien notice recorded by a  
27 broker under this part claims an automatic renewal commission  
28 that is earned but not then payable, the lien notice expires  
29 10 years after the date of recording, unless within that time  
30 the broker commences an action to foreclose the lien under s.  
31 475.809 and records a notice of lis pendens in the public

Bill No. SB 2036

Barcode 322466

1 records of the county where the lien notice was recorded. If  
 2 the brokerage agreement remains effective, the broker may  
 3 extend the expiration date of a lien notice for an automatic  
 4 renewal commission by recording an extension notice in the  
 5 same public records within the last 6 months before such  
 6 expiration date. An extension notice shall refer to the  
 7 recording information of the original lien notice, shall state  
 8 that the brokerage agreement remains effective, and shall  
 9 include the same information and be executed in the same  
 10 manner as required by s. 475.805(1) for the original lien  
 11 notice. A timely recorded extension notice shall extend the  
 12 expiration date of the original recorded lien notice by 10  
 13 additional years. Successive extension notices may be recorded  
 14 for so long as the brokerage agreement remains effective  
 15 between the broker and the owner. Within 10 days after  
 16 recording an extension notice, the broker shall deliver a copy  
 17 thereof to the owner.

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

24  
 25 NOTICE OF CONTEST OF BROKER'S LIEN

26  
 27 To: \_\_\_\_\_ (Name and address of broker)

28 You are notified that the undersigned contests the lien notice  
 29 filed by you on \_\_\_\_\_, (year), and recorded in Official  
 30 Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the public records of  
 31 \_\_\_\_\_ County, Florida, and that the time within which

Bill No. SB 2036

Barcode 322466

1 you may file suit to enforce your lien is limited to 60 days  
2 from the date of service of this notice. This \_\_\_\_\_ day of  
3 \_\_\_\_\_, (year) .

4 Signed: (Owner or Attorney)

5  
6 The lien of any broker upon whom such a notice of contest is  
7 served and who fails to institute a suit to enforce the lien  
8 within 60 days after service of such notice of contest shall  
9 be extinguished automatically. The clerk shall mail a copy of  
10 the notice of contest to the broker at the address shown in  
11 the lien notice or most recent amendment thereto and shall  
12 certify to such service on the face of the notice of contest  
13 and record the notice of contest. Service of the notice of  
14 contest by the clerk shall be deemed complete upon mailing.

15 475.809 Foreclosure of lien; civil action by owner;  
16 award of costs and attorney's fees.--

17 (1) A broker may enforce a lien for a commission that  
18 is earned and payable under this part by a foreclosure suit in  
19 the same manner as if the lien notice were a mortgage recorded  
20 against the commercial real estate of the owner obligated to  
21 pay the claimed commission. The foreclosure shall be commenced  
22 in the county court or circuit court, whichever may have  
23 jurisdiction of controversies in the amount of the claimed  
24 commission, of the county where the lien notice was recorded.  
25 The foreclosure action shall be commenced before the lien  
26 notice expires or is extinguished under s. 475.807(8);  
27 otherwise the lien notice shall become null and void and have  
28 no further force or effect.

29 (2) If a lien notice is recorded pursuant to s.  
30 475.807 and the owner disputes the claimed commission, the  
31 owner may file a civil action seeking to discharge the lien in

Bill No. SB 2036

Barcode 322466

1 the county court or circuit court, whichever may have  
2 jurisdiction of controversies in the amount of the claimed  
3 commission, of the county where the lien notice was recorded.

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

7 475.811 Transfer of lien to security.--

8 (1)(a) Any lien claimed by a broker by recording a  
9 lien notice under this part may be transferred by any person  
10 having an interest in the commercial real estate upon which  
11 the lien is imposed from such commercial real estate to other  
12 security by either:

- 13 1. Depositing in the clerk's office a sum of money; or
- 14 2. Filing in the clerk's office a bond executed as  
15 surety by a surety insurer licensed to do business in this  
16 state, either to be in an amount equal to the amount claimed  
17 in the lien notice, plus interest thereon at the legal rate  
18 for 3 years, plus \$1,000 or 25 percent of the amount demanded  
19 in the lien notice, whichever is greater, to apply on any  
20 attorney's fees and court costs that may be taxed in any  
21 proceeding to enforce said lien.

22 (b) Such deposit or bond shall be conditioned to pay  
23 any judgment or decree that may be rendered for the  
24 satisfaction of the lien for which such lien notice was  
25 recorded. Upon making such deposit or filing such bond, the  
26 clerk shall make and record a certificate showing the transfer  
27 of the lien from the commercial real estate to the security  
28 and shall mail a copy thereof by registered or certified mail  
29 to the broker named in the lien notice at the address stated  
30 therein. Upon filing the certificate of transfer the  
31 commercial real estate shall thereupon be released from the

Bill No. SB 2036

Barcode 322466

1 lien claimed and such lien shall be transferred to said  
2 security. Subject to any order of the court increasing the  
3 amount required for the lien transfer deposit or bond, no  
4 other judgment or decree to pay money may be entered by the  
5 court against the owner on account of the commission claimed  
6 in the lien notice. The clerk shall be entitled to a service  
7 charge for making and serving the certificate, in the amount  
8 of up to \$15. If the transaction involves the transfer of  
9 multiple liens, an additional charge of up to \$7.50 for each  
10 additional lien shall be charged. For recording the  
11 certificate and approving the bond, the clerk shall receive  
12 her or his usual statutory service charges as prescribed in s.  
13 28.24. Any number of liens may be transferred to one such  
14 security.

15       (2) Any excess of the security over the aggregate  
16 amount of any judgments or decrees rendered plus costs  
17 actually taxed shall be repaid to the party filing the  
18 security or her or his successor in interest. Any deposit of  
19 money shall be considered as paid into court and shall be  
20 subject to the provisions of law relative to payments of money  
21 into court and the disposition of same.

22       (3) In any action pending under s. 475.809 to  
23 foreclose or discharge a lien, any party having an interest in  
24 such security or the commercial real estate from which the  
25 lien was transferred may at any time and any number of times  
26 file a motion for an order to require additional security,  
27 reduction of security, change or substitution of sureties,  
28 payment of discharge thereof, or any other matter affecting  
29 said security. If the court finds that the amount of the  
30 deposit or bond in excess of the amount claimed in the lien  
31 notice is insufficient to pay the broker's attorney's fees and

Barcode 322466

1 court costs incurred in the action to enforce the lien, the  
2 court shall increase the amount of the cash deposit or lien  
3 transfer bond.

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

9 475.813 Subordination of lien.--

10 (1) This part does not preclude a broker from agreeing  
11 to subordinate a lien claimed by the broker under this part in  
12 favor of the holder of any mortgage or other lien against the  
13 owner's interest in the commercial real estate that is subject  
14 to the lien of the broker.

15 (2) With or without the consent of the broker, the  
16 owner may subordinate a lien claimed by the broker for an  
17 automatic renewal commission in favor of the holder of a  
18 subsequent mortgage encumbering the owner's interest in the  
19 commercial real estate. The subordination instrument described  
20 in this subsection must be made in writing and must be  
21 recorded by the owner in the public records of the same county  
22 where the lien notice of the broker was recorded.

23 (3) A lien notice of the broker recorded against  
24 commercial real estate under this part is subordinate to any  
25 mortgage that has at any time secured any purchase money  
26 indebtedness, if the mortgage is made by the owner of the  
27 commercial real estate in favor of a person unrelated to the  
28 owner. This subsection applies only to the relative priority  
29 of the lien notice of the broker and the mortgage with respect  
30 to each other, and this subsection does not affect their  
31 relative priority with respect to any other mortgage, lien,

Bill No. SB 2036

Barcode 322466

1 encumbrance, or other matter affecting the title to the  
2 commercial real estate.

3 Section 3. Paragraph (j) of subsection (1) of section  
4 475.42, Florida Statutes, is amended to read:

5 475.42 Violations and penalties.--

6 (1) VIOLATIONS.--

7 (j) A broker or sales associate may not place, or  
8 cause to be placed, upon the public records of any county, any  
9 contract, assignment, deed, will, mortgage, affidavit, or  
10 other writing which purports to affect the title of, or  
11 encumber, any real property if the same is known to her or him  
12 to be false, void, or not authorized to be placed of record,  
13 or not executed in the form entitling it to be recorded, or  
14 the execution or recording whereof has not been authorized by  
15 the owner of the property, maliciously or for the purpose of  
16 collecting a commission, or to coerce the payment of money to  
17 the broker or sales associate or other person, or for any  
18 unlawful purpose. However, nothing in this paragraph shall be  
19 construed to prohibit a broker or a sales associate from  
20 recording a judgment rendered by a court of this state or to  
21 prohibit a broker from placing a lien on a property where  
22 expressly permitted by contractual agreement or otherwise  
23 allowed by law.

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

25

26

27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete everything before the enacting clause

30

31 and insert:

Bill No. SB 2036

Barcode 322466

1                   A bill to be entitled

2                   An act relating to liens on commercial real

3                   estate; creating part III of ch. 475, F.S., the

4                   "Commercial Real Estate Sales Commission Lien

5                   Act"; providing definitions; specifying

6                   conditions under which a broker is entitled to

7                   a lien upon the owner's net proceeds from the

8                   disposition of commercial real estate for any

9                   commission earned by the broker under a

10                  brokerage agreement; providing that the lien

11                  cannot be assigned, enforced, or waived by

12                  anyone other than the broker; requiring

13                  disclosure; providing for the contents of the

14                  commission notice and delivery to certain

15                  parties; providing a form for the commission

16                  notice; providing that a lien may not be

17                  enforced if the notice is not delivered to

18                  certain parties; providing that the commission

19                  notice may be recorded; providing for

20                  expiration and extension under certain

21                  conditions; providing for release of the

22                  commission notice under certain conditions;

23                  providing the duties of the closing agent;

24                  requiring the closing agent to reserve an

25                  owner's proceeds under certain conditions;

26                  providing for the release of proceeds under

27                  certain conditions; requiring deduction of

28                  certain costs from the proceeds; providing for

29                  interpleader or other legal proceedings sought

30                  by a closing agent to adjudicate certain

31                  rights; providing for the deposit of reserved



Bill No. SB 2036

Barcode 322466

1 proceeds in a court registry; providing for the  
2 discharge of the closing agent from further  
3 liability; providing for a civil action if a  
4 dispute arises concerning the proceeds;  
5 providing that the prevailing party may recover  
6 certain fees and costs incurred in a civil  
7 action; establishing the priority of a recorded  
8 commission notice; providing for the service of  
9 notice; providing that a buyer's broker is not  
10 entitled to a lien; providing certain  
11 conditions under which a buyer's broker may  
12 seek payment of a commission; creating part IV  
13 of ch. 475, F.S., the "Commercial Real Estate  
14 Leasing Commission Lien Act"; providing  
15 definitions; providing conditions under which a  
16 broker may place a lien upon an owner's  
17 interest in commercial real estate for any  
18 commission earned under a brokerage agreement  
19 with respect to a lease of commercial real  
20 estate; providing that the lien cannot be  
21 assigned, enforced, or waived by anyone other  
22 than the broker; requiring disclosure;  
23 providing for the contents of the lien notice;  
24 providing a form for the lien notice; providing  
25 that the lien notice may be recorded; providing  
26 that a lien may not be enforced if the broker  
27 fails to record the notice; providing for  
28 effectiveness of a recorded lien notice;  
29 providing for release of the lien notice under  
30 certain conditions; providing for expiration  
31 and extension under certain conditions;

Bill No. SB 2036

Barcode 322466

1 providing for foreclosure of a recorded lien  
2 under certain conditions; providing a form;  
3 providing for a civil action if a dispute  
4 arises concerning the proceeds; providing that  
5 the prevailing party may recover certain fees  
6 and costs incurred in a civil action; providing  
7 procedures to transfer a lien to a security;  
8 providing that the clerk of court may collect a  
9 service charge; providing for a subordination  
10 of a lien; amending s. 475.42, F.S.; providing  
11 that a broker may place a lien when allowed by  
12 law; providing an effective date.

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