

By Senator Posey

24-1551-05

1                                   A bill to be entitled  
2           An act relating to liens on commercial real  
3           estate; creating ch. 714, F.S., the "Commercial  
4           Real Estate Lien Act"; providing definitions;  
5           specifying conditions under which a broker is  
6           entitled to a lien on commercial real estate;  
7           requiring a written instrument; requiring the  
8           recording of a notice of lien; providing for  
9           the contents and service of such notice;  
10          providing requirements with respect to  
11          installment and future commissions, leases,  
12          sales of property before commission is due, and  
13          written instruments with transferees; providing  
14          for enforcement; requiring written demand to  
15          initiate or file an answer to such lawsuit;  
16          providing conditions for satisfaction or  
17          release of the lien; providing for an  
18          alternative dispute resolution process;  
19          providing for assessment of costs, fees, and  
20          interest; declaring any waiver of lien rights  
21          void; providing priority of other recorded  
22          liens, mortgages, and encumbrances; providing  
23          for escrow of disputed amounts; amending s.  
24          475.42, F.S.; providing that brokers may place  
25          liens on property as provided by law; providing  
26          an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Chapter 714, Florida Statutes, consisting  
2 of sections 714.001, 714.003, 714.005, 714.007, and 714.009,  
3 is created to read:

4           714.001 Popular name.--This chapter may be cited as  
5 the "Commercial Real Estate Lien Act."

6           714.003 Definitions.--As used in this chapter, the  
7 term:

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

9           (2)(a) "Commercial real estate" means any real estate  
10 other than:

11           1. Real estate containing one to four residential  
12 units; or

13           2. Real estate on which no building or structure is  
14 located and which is zoned for single-family residential use.

15           (b) "Commercial real estate" does not include  
16 single-family residential units such as condominiums,  
17 townhouses, or homes in a subdivision when sold, leased, or  
18 otherwise conveyed on a unit-by-unit basis, even if the units  
19 are part of a larger building or parcel containing more than  
20 four residential units.

21           (3) "Commission" means compensation or consideration  
22 that may be due a broker for services performed within the  
23 scope of the broker's license.

24           (4) "Future commission" means an additional commission  
25 that may be due a broker as a result of future actions,  
26 including the exercise of an option to expand leased premises,  
27 to renew or extend a lease, or to purchase leased property.

28           (5) "Real estate" has the same meaning as in s.  
29 475.01.

30           (6) "Transferee" means a person purchasing or  
31 receiving an interest in commercial real estate.

1           (7) "Transferor" means the person selling or conveying  
2 an interest in commercial real estate.

3           714.005 Broker's lien.--

4           (1) WRITTEN INSTRUMENT.--A broker has a lien upon  
5 commercial real estate or any interest in commercial real  
6 estate that is the subject of a purchase, lease, or other  
7 conveyance to a buyer or tenant of an interest in the  
8 commercial real estate, in the amount that the broker is due  
9 for licensed services, including, but not limited to,  
10 brokerage fees, consulting fees, and management fees, under a  
11 valid written instrument signed by a transferor or the  
12 transferor's agent or by a prospective transferee or the  
13 transferee's agent. The lien is available only to the broker  
14 named in the signed instrument, and not to any employee or  
15 independent contractor of the broker.

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

17           (a) A lien attaches to commercial real estate or any  
18 interest in commercial real estate if the broker:

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

21           2. Except as otherwise provided in subsections  
22 (4)-(7), records a notice of lien in the county in which the  
23 property is located prior to the conveyance or transfer of the  
24 real estate against which the broker claims the lien.

25           (b) The lien attaches on the date the notice of lien  
26 is recorded and does not relate back to the date of the  
27 written instrument.

28           (3) CONTENTS OF NOTICE OF LIEN.--A notice of lien must  
29 contain the name of the claimant, the name of the owner of  
30 record, a description of the property upon which the lien is  
31 claimed, the amount for which the lien is claimed, and the

1 real estate license number of the broker. The notice must  
2 state that the information in the notice is true and accurate  
3 to the knowledge of the signator, must be signed by the broker  
4 or a person authorized to sign on behalf of the broker, and  
5 must be notarized.

6 (4) COMMISSION DUE IN INSTALLMENTS.--Except as  
7 otherwise provided in subsections (5)-(7), when payment to a  
8 broker is due in installments, a portion of which is due only  
9 after the conveyance or transfer of the commercial real  
10 estate, any notice of lien for payments due after the  
11 conveyance or transfer may be recorded after the conveyance or  
12 transfer of the real estate but not later than 90 days after  
13 the date the payment is due. A notice of lien recorded prior  
14 to conveyance or transfer of the real estate claiming all  
15 moneys due under an installment payment agreement or for  
16 future commissions as described in subsection (6) is  
17 enforceable only to the extent that it pertains to payments  
18 due from the transferee to the transferor after the conveyance  
19 or transfer. As payments or partial payments of commission are  
20 received, a broker must provide partial releases therefor,  
21 reducing the amount due the broker under the notice of lien.

22 (5) LEASE OF COMMERCIAL REAL ESTATE.--In a lease,  
23 sublease, or assignment of lease transaction, a notice of lien  
24 must be recorded no later than 90 days after the transferee  
25 takes possession of the leased premises. However, if a  
26 transferor personally serves written notice of the intended  
27 execution of the lease on a broker entitled to claim a lien,  
28 at least 10 days prior to the date of the intended execution  
29 of the lease, a notice of lien must be recorded before the  
30 date indicated in such notice. The lien attaches on the date  
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1 the notice of lien is recorded and may not relate back to the  
2 date of the written instrument.

3 (6) FUTURE COMMISSION.--A broker who may be due future  
4 commissions pursuant to a written instrument signed by the  
5 then transferor or transferee may record a notice of lien  
6 after execution of the lease or other written instrument that  
7 contains such option, but may not record the notice of lien  
8 later than 90 days after the event on which the claimed future  
9 commission occurs. Notwithstanding subsection (10), an action  
10 to enforce a lien under this subsection must be commenced  
11 within 2 years after the event upon which the future  
12 commission is claimed.

13 (7) REAL ESTATE SOLD BEFORE COMMISSION DUE.--If  
14 commercial real estate is sold or conveyed prior to the date  
15 on which a future commission or an unpaid installment of a  
16 commission is due and the broker has recorded a valid notice  
17 of lien prior to the sale or conveyance, the purchaser or  
18 transferee is deemed to have notice of and shall take title to  
19 the real estate subject to the lien. However, if a broker  
20 claiming a future commission does not record a notice of lien  
21 for future commission prior to the recording of a deed  
22 conveying legal title to the real estate, the broker may not  
23 claim a lien on the real estate. This subsection does not  
24 limit or affect claims or defenses a broker or other party has  
25 on any other basis, in law or equity.

26 (8) WRITTEN INSTRUMENT WITH TRANSFEREE.--If a  
27 transferee executes a written instrument in accordance with  
28 subsection (1), a lien attaches to the transferee's interest  
29 upon the transferee purchasing or accepting conveyance of the  
30 real estate and the recording of a notice of lien by the  
31 broker in the county in which the property is located, within

1 90 days after the purchase or conveyance. The lien attaches on  
2 the date the notice of lien was recorded and does not relate  
3 back to the date of the written instrument.

4 (9) SERVICE OF NOTICE OF LIEN.--A broker must, within  
5 10 days after recording a notice of lien, personally deliver  
6 or mail, by registered or certified mail, a copy of the notice  
7 to the owner of record of the commercial real estate or the  
8 owner's agent at the owner's address as stated in the written  
9 instrument on which the claim for lien is based or, if no  
10 address is given, to the address of the property on which the  
11 claim of lien is based. If a notice of lien is recorded within  
12 10 days prior to closing, a broker is not required to  
13 personally deliver or mail a copy of the notice. Mailing is  
14 effective when the notice is deposited in the United States  
15 mail with postage prepaid. A broker's lien on commercial real  
16 estate is unenforceable if delivery or mailing of the notice  
17 is not made within the time and in the prescribed manner.

18 (10) LAWSUIT TO ENFORCE LIEN.--

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

23 (b) A broker claiming a lien must, within 2 years  
24 after recording the notice of lien, commence proceedings by  
25 filing a complaint. Failure to commence proceedings within  
26 this period extinguishes the lien. A subsequent notice of lien  
27 may not be given for the same claim, nor may that claim be  
28 asserted in any proceeding under this chapter.

29 (c) A broker claiming a lien based upon an option or  
30 other right to purchase or lease must, within 2 years after  
31 the conveyance or transfer of the real estate under the

1 exercise of the option, commence proceedings by filing a  
2 complaint. Failure to commence proceedings within the time  
3 period extinguishes the lien. A subsequent notice of lien may  
4 not be given for the same claim, nor may that claim be  
5 asserted in any proceedings under this chapter.

6 (d) A complaint must contain a brief statement of the  
7 contract or instrument on which the lien is based, the  
8 effective date, a description of the services performed, the  
9 amount due and unpaid, a description of the property subject  
10 to the lien, and other facts necessary for a full  
11 understanding of the rights of the parties. The plaintiff  
12 shall make as defendants to the action all interested parties  
13 of whose interest the plaintiff is notified or has knowledge.  
14 The plaintiff shall issue summons and provide service to the  
15 defendants as in other civil actions. When a defendant resides  
16 out of or leaves this state, or, upon inquiry cannot be found,  
17 or is concealed within the state so that process cannot be  
18 served, the plaintiff shall cause notice to be given or a copy  
19 of the complaint to be served on the defendant in the manner  
20 provided for other civil actions. Failure of the plaintiff to  
21 provide proper summons or notice to the defendant is grounds  
22 for judgment in favor of the defendant with prejudice. A lien  
23 claimed under this chapter must be foreclosed in the manner of  
24 foreclosing a mortgage under chapter 702.

25 (11) DEMAND TO INITIATE OR FILE ANSWER TO  
26 LAWSUIT.--Upon written demand of the owner of record or a  
27 lienee of commercial real estate, or an agent of either,  
28 served on the broker claiming the lien, to require suit to be  
29 commenced to enforce the lien or an answer to be filed in a  
30 pending suit to enforce the lien, the suit must be commenced  
31 or the answer filed within 30 days or the lien shall be

1 extinguished. Service of such written demand may be made by  
2 registered or certified mail, return receipt requested, or by  
3 personal service.

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

5 (a) When a notice of lien on commercial real estate is  
6 recorded and the claimed commission has been paid to a broker  
7 claiming a lien on the property, or when a suit to enforce the  
8 lien is not filed within the time required by law, the broker  
9 must acknowledge satisfaction or release of the lien in  
10 writing, upon written demand of the owner of the real estate,  
11 within 5 days after payment of the amount claimed or within 5  
12 days after expiration of the period in which the complaint was  
13 required to be filed.

14 (b) When a notice of lien on commercial real estate  
15 has been recorded and a condition occurs that precludes a  
16 broker from receiving compensation under the agreement upon  
17 which the lien is based, the broker must provide to the owner  
18 of record, within 10 days after written demand by such owner,  
19 a written release or satisfaction of the lien.

20 (13) ALTERNATIVE DISPUTE RESOLUTION.--If the broker  
21 and the party from whom the commission is claimed agree to  
22 alternative dispute resolution, the claim shall be resolved in  
23 the agreed-upon forum. The court shall retain jurisdiction to  
24 enter judgment on the result reached in the alternative  
25 dispute resolution proceeding on all parties to the action.  
26 The broker's notice of lien remains of record and the action  
27 to enforce the lien shall be stayed during the pendency of the  
28 alternative dispute resolution process.

29 (14) ASSESSMENT OF COSTS, FEES, AND INTEREST.--The  
30 cost of proceedings brought under this section, including  
31 reasonable attorney's fees, costs, and prejudgment interest



1 due to the prevailing party, shall be borne by the  
2 nonprevailing party. When more than one party is responsible  
3 for costs, fees, and prejudgment interest, the costs, fees,  
4 and prejudgment interest shall be equitably apportioned by the  
5 court or alternative dispute resolution tribunal among the  
6 responsible parties.

7 (15) WAIVER OF LIEN RIGHTS VOID.--Except for a waiver  
8 or release of lien provided in consideration of payment of the  
9 fee, commission, or other consideration acceptable to a broker  
10 or pursuant to subsection (12), a waiver of a broker's right  
11 to a lien on commercial real estate is void.

12 714.007 Priority of other recorded liens, mortgages,  
13 and encumbrances.--Valid prior recorded liens, mortgages, and  
14 other encumbrances have priority over a broker's lien. Such  
15 prior recorded liens, mortgages, and encumbrances include,  
16 without limitation:

17 (1) A valid mechanic's lien claim that is recorded  
18 after the broker's notice of lien but which relates back to a  
19 date prior to the recording date of the broker's notice of  
20 lien.

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

23 714.009 Escrow of disputed amounts.--Except as  
24 otherwise provided in this chapter, when a notice of lien on  
25 commercial real estate is filed which prevents the closing of  
26 a transaction or conveyance, an escrow account shall be  
27 established from the proceeds from the transaction or  
28 conveyance, or other collateral or security in an amount  
29 sufficient to release the lien. This requirement is not cause  
30 for any party to refuse to close the transaction or  
31 conveyance. The moneys required to be held in escrow shall be

1 held until the rights of the parties have been determined by  
2 written agreement, by a court, or by any other resolution  
3 process agreed to by the parties. Upon escrow of funds in the  
4 amount claimed in the lien, the lien and notice of lien are  
5 extinguished. Upon the broker's release of the lien, the  
6 broker is deemed to have an equitable lien on the escrow  
7 funds, pending a resolution of the claim. The escrow may not  
8 be released until a resolution is reached and agreed to by all  
9 necessary parties or ordered by a court. The parties are not  
10 required to follow the escrow procedure in this section if  
11 alternative procedures to allow the transaction to close are  
12 available and acceptable to the transferee. If the proceeds  
13 from the transaction are insufficient to release all liens  
14 claimed, including the broker's lien, the parties are not  
15 required to follow the escrow procedure in this section.

16 Section 2. Paragraph (j) of subsection (1) of section  
17 475.42, Florida Statutes, is amended to read:

18 475.42 Violations and penalties.--

19 (1) VIOLATIONS.--

20 (j) A broker or sales associate may not place, or  
21 cause to be placed, upon the public records of any county, any  
22 contract, assignment, deed, will, mortgage, affidavit, or  
23 other writing which purports to affect the title of, or  
24 encumber, any real property if the same is known to her or him  
25 to be false, void, or not authorized to be placed of record,  
26 or not executed in the form entitling it to be recorded, or  
27 the execution or recording whereof has not been authorized by  
28 the owner of the property, maliciously or for the purpose of  
29 collecting a commission, or to coerce the payment of money to  
30 the broker or sales associate or other person, or for any  
31 unlawful purpose. However, ~~nothing in~~ this paragraph does not

1 ~~shall be construed to~~ prohibit a broker or a sales associate  
2 from recording a judgment rendered by a court of this state or  
3 to prohibit a broker from placing a lien on a property where  
4 expressly permitted by contractual agreement or otherwise  
5 allowed by law.

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

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9 SENATE SUMMARY

10 Authorizes a real estate broker to secure a lien on  
11 commercial property resulting from a specified  
12 transaction in which the broker is involved. Requires a  
13 written contract and requires the broker to record a  
14 notice of lien and serve notice of such filing. Provides  
15 procedures for the enforcement of the liens. Provides for  
16 alternative dispute resolution. Provides for the award of  
17 attorney's fees, costs, and prejudgment interest. (See  
18 bill for details.)  
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