

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;

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.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Part III of chapter 475, Florida Statutes,
17 consisting of sections 475.700, 475.701, 475.703, 475.705,
18 475.707, 475.709, 475.711, 475.713, 475.715, 475.717, and
19 475.719, is created to read:

20 475.700 Popular name.--Sections 475.700-475.719 may be
21 cited as the "Commercial Real Estate Sales Commission Lien
22 Act."

23 475.701 Definitions.--As used in this part:

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

25 (2) "Brokerage agreement" means a written contract
26 entered into on or after the effective date of this act
27 between an owner of commercial real estate and a broker that
28 obligates the owner to pay a commission to the broker for
29 licensed services provided by the broker relating to the sale
30 or disposition of the commercial real estate as specified in
31 the contract.

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

29 475.703 Broker's lien for sales commission.--

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

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

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

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

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

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

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

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

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

29 (c) Cannot be waived before the commission is earned.
30
31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10

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

12 _____

13 2. Legal description of the commercial real estate:

14 _____

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

17 _____

18 _____

19 _____

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

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

24 \$ _____, or

25 _____ percent of sales price, or

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

28 _____.

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

1 be true and correct, and that the undersigned broker is making
2 this commission claim pursuant to the written brokerage
3 commission agreement described in this commission notice.

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

6
7 Signed: _____ (broker)

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

12 Signed: _____ (notary public)

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

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

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

1 (a) The owner of the commercial real estate specified
2 in the brokerage agreement.

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

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

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

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

29
30 Notwithstanding the provisions of this subsection, a broker
31 who fails to deliver a copy of a commission notice to the

1 owner and the closing agent before the disbursement of the
2 owner's net proceeds may not enforce a lien for the commission
3 under this part, and the delivery of a copy of a commission
4 notice after such disbursement is ineffective under this part.

5 475.707 Recording commission notice; effectiveness.--

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

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

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

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

28 (3) A commission notice recorded under this part
29 expires 1 year after the date of recording, unless the
30 brokerage agreement remains effective after the expiration
31 date of the commission notice and the broker records an

1 extension notice in the same public records within the last 60
2 days before such expiration date. An extension notice shall
3 refer to the recording information of the original commission
4 notice, shall state that the brokerage agreement remains
5 effective, and shall include the information and be executed
6 in the manner required by s. 475.705(1) for the original
7 commission notice. A timely recorded extension notice shall
8 extend the expiration date of the original recorded commission
9 notice by 1 additional year. Successive extension notices may
10 be recorded for so long as the brokerage agreement remains
11 effective between the broker and the owner. Within 10 days
12 after recording an extension notice the broker shall deliver a
13 copy thereof to the owner.

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

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

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

1 the commission is paid or the commission notice is otherwise
2 discharged or satisfied, record a written release of the
3 commission notice in the public records of the county where
4 the commission notice was recorded.

5 475.709 Duties of closing agent; reservation of
6 owner's net proceeds.--

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

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

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

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

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

28 (2)(a) The closing agent designated to close a
29 transaction for the disposition of commercial real estate may
30 require the owner of the commercial real estate to deliver a
31

1 sworn affidavit identifying the commercial real estate and
2 disclosing to the closing agent:

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

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

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

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

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

1 (1), the closing agent shall reserve the greater of the two
2 commission amounts. The closing agent shall release the
3 reserved proceeds only in accordance with the provisions of
4 this part.

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

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

28 (5) If the owner confirms that a commission is payable
29 to the broker, at the closing of the disposition of the
30 commercial real estate the closing agent shall release to the
31 broker the confirmed amount of the commission from the

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

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

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

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

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

26 (7) If the owner's net proceeds consist in whole or in
27 part of a purchase-money note, and if the money portion of the
28 owner's net proceeds is insufficient to pay the full amount of
29 the commission claimed, the broker's lien under this part for
30 the portion of the commission not paid from the money proceeds
31 shall attach to the purchase-money note and any security

1 therefor, and the closing agent shall reserve and release the
2 purchase-money note in accordance with this part in the same
3 manner as the money portion of the reserved proceeds. If the
4 owner and the broker are unable to agree within 5 days after
5 the closing regarding the closing agent's release of the
6 purchase-money note, the closing agent shall interplead the
7 purchase-money note along with any reserved proceeds in
8 accordance with s. 475.711.

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

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

31

1 (10) Neither the closing agent's requirement for an
2 owner's affidavit pursuant to subsection (2), nor the closing
3 agent's reservation of any portion of an owner's net proceeds
4 pursuant to subsection (1) or subsection (2), shall relieve
5 the owner of the owner's obligation to close the transaction
6 for the disposition of the commercial real estate, including,
7 without limitation, any obligation of the owner to the buyer
8 under the purchase and sale contract to discharge mortgages,
9 liens, or encumbrances against the commercial real estate
10 which were recorded after the commission notice and therefore
11 are not subtracted from gross sales proceeds when computing
12 the owner's net proceeds under s. 475.719.

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

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

22 475.711 Interpleader or other proceedings; deposit of
23 reserved proceeds in court registry; discharge of closing
24 agent from further liability.--

25 (1) The closing agent shall, by interpleader action or
26 other legal proceeding, seek adjudication of the rights of the
27 parties with respect to disputed reserved proceeds by the
28 county court or circuit court, whichever may have jurisdiction
29 of controversies in the amount of the disputed reserved
30 proceeds, in a county where all or a portion of the commercial
31

1 real estate is located if, after the closing of a transaction
2 for the disposition of the commercial real estate:

3 (a) The closing agent has reserved all or a portion of
4 the owner's net proceeds pursuant to s. 475.709 and the owner
5 disputes the release to the broker of all or any portion of
6 the reserved proceeds.

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

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

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

24 (a) Any costs incurred by the closing agent to
25 commence such action or proceeding, or to appear in any such
26 action or proceeding commenced by the owner or the broker,
27 including reasonable attorney's fees.

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

30
31

1 (c) The service charges of the clerk of court under s.
2 28.24 for receiving the net amount of such disputed reserved
3 proceeds into the registry of the court.

4 (3) If a commission notice has been recorded in the
5 public records of the county or counties where the commercial
6 real estate is located, upon depositing the net disputed
7 reserved proceeds with the clerk of court pursuant to
8 subsection (2), the closing agent shall execute and record an
9 affidavit referring to the recorded commission notice and
10 stating that the net disputed reserved proceeds have been so
11 deposited in accordance with this part. The recording of the
12 affidavit shall operate to release the recorded commission
13 notice.

14 (4) If a closing agent deposits the net disputed
15 reserved proceeds with the clerk of court pursuant to
16 subsection (2), the closing agent is discharged from any
17 further liability or responsibility concerning the disputed
18 reserved proceeds.

19 475.713 Civil action concerning commission; order to
20 show cause; hearing; release of proceeds; award of costs and
21 attorney's fees.--

22 (1) If a commission notice claiming a commission is
23 delivered to an owner pursuant to s. 475.705 and the owner
24 disputes the claimed commission, the owner or the broker may
25 file a civil action concerning the commission claim in the
26 county court or circuit court, whichever has jurisdiction of
27 controversies in the amount of the claimed commission, of the
28 county where the commercial real estate or a portion of the
29 commercial real estate is located.

30 (2) In a civil action by the owner, at the time the
31 summons is issued or at any time before the complaint is

1 answered by the broker, the owner may apply to the court for
2 an order directing the broker to appear before the court at a
3 time not earlier than 7 days or later than 15 days after the
4 date of service of the motion and order on the broker to show
5 cause why the commission claim should not be dismissed. The
6 motion must state the grounds upon which relief is sought and
7 must be supported by the affidavit of the owner setting forth
8 a concise statement of the facts upon which the motion is
9 based. The order to show cause shall clearly state that if the
10 broker fails to appear at the time and place specified in the
11 order, the broker's claim of lien against the owner's net
12 proceeds under this part shall be released, with prejudice,
13 and the broker shall be ordered to pay the costs incurred by
14 the owner and the closing agent, including reasonable
15 attorney's fees.

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

1 the court shall issue an order so stating, ordering the
2 release to the broker of the disputed reserved proceeds or
3 such portion thereof to which the court determines that the
4 broker is entitled, and awarding costs and reasonable
5 attorney's fees to the broker to be paid by the owner. Such
6 orders are final judgments.

7 (4) A certified copy of any order issued by the court
8 pursuant to subsection (3) discharging a recorded commission
9 notice shall be recorded at the expense of the broker in the
10 public records where the commission notice was recorded, and
11 such order shall operate as a cancellation of the recorded
12 commission notice.

13 (5)(a) In a civil action commenced by the owner or the
14 broker under this section or in an interpleader action or
15 other proceeding commenced by the closing agent under s.
16 475.711, the owner or the broker that is not the prevailing
17 party shall be required to pay:

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

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

22 3. The amount of any costs, recording charges, and
23 service charges of the clerk of court that were deducted from
24 the disputed reserved proceeds under s. 475.711(2) in
25 determining the net amount thereof deposited into the registry
26 of the court.

27 (b) If the court determines that neither the owner nor
28 the broker is the prevailing party, the amounts set forth in
29 subparagraphs (a)1. and 2. shall be divided equally between
30 and paid by the owner and the broker.

31

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

4 475.715 Priority of recorded commission notice.--All
5 statutory liens, consensual liens, mortgages, deeds of trust,
6 assignments of rents, and other encumbrances, including all
7 advances or charges made or accruing thereunder, whether
8 voluntary or obligatory, and all modifications, extensions,
9 renewals, and replacements thereof, recorded prior to the
10 recording of a commission notice pursuant to the provisions of
11 s. 475.707, have priority over the commission notice, and the
12 amount required to discharge such prior recorded liens shall
13 be subtracted from gross sales proceeds in computing the
14 owner's net proceeds unless the buyer permits the same to
15 remain a lien against the title to the commercial real estate.
16 A prior recorded lien includes, without limitation, a valid
17 construction lien claim that is recorded after the recording
18 of the broker's commission notice but which relates back to a
19 notice of commencement recorded under s. 713.13 prior to the
20 recording date of the broker's commission notice.

21 475.717 Service of notice.--Notices to be delivered to
22 a party pursuant to this part other than service of process as
23 required in civil actions shall be by service of process, by
24 registered or certified mail with return receipt requested, or
25 by personal or electronic delivery and obtaining evidence of
26 delivery in the form of a receipt or other paper or electronic
27 acknowledgment by the party to whom the notice is delivered.
28 Delivery is effective at the time of personal service,
29 personal or electronic delivery, or 3 days following deposit
30 in the mail as required by this section. Notice to a broker or
31 owner may be given to the address of the broker or owner that

1 is contained in the brokerage agreement or such other address
2 as is contained in a written notice from the broker or owner
3 to the party giving the notice. If no address is provided in
4 the brokerage agreement, the notice to the broker may be given
5 to the broker's address contained in the commission notice.
6 Notice to a closing agent shall be addressed to the individual
7 responsible for the closing if the person sending the notice
8 knows that individual's name.

9 475.719 Buyer's broker.--As used in this section, the
10 term "buyer's broker" means a broker that is entitled to
11 receive payment from the buyer of commercial real estate of
12 any fee or other compensation for licensed services, as
13 specified in a written contract made between the buyer and the
14 broker on or after the effective date of this act relating to
15 the buyer's purchase of the commercial real estate.

16 (1) A written contract between a buyer and a buyer's
17 broker for the payment by the buyer of any fee or other
18 compensation to the buyer's broker for licensed services
19 relating to the sale or disposition of commercial real estate
20 to the buyer is not a brokerage agreement with the owner under
21 this part, and the buyer's broker is not entitled under this
22 part to record any commission notice, to claim any lien
23 against commercial real estate, or to claim any lien against
24 the owner's net proceeds from the sale or disposition of
25 commercial real estate.

26 (2) If an owner enters into a written contract with a
27 buyer for the sale or disposition of any commercial real
28 estate that will entitle the buyer's broker to receive a fee
29 or other compensation from the buyer under the terms of the
30 buyer's broker's written contract with the buyer, the buyer's
31 broker may give notice of the buyer's broker's right to

1 receive such payment to the closing agent, the owner, the
2 buyer, or any other party to the sale or disposition or the
3 financing thereof, provided that such notice may be given
4 without violating any confidentiality provisions contained in
5 either such written contract.

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

12 Section 2. Part IV of chapter 475, Florida Statutes,
13 consisting of sections 475.800, 475.801, 475.803, 475.805,
14 475.807, 475.809, 475.811, and 475.813, is created to read:

15 475.800 Short title.--Sections 475.800-475.813 may be
16 cited as the "Commercial Real Estate Leasing Commission Lien
17 Act."

18 475.801 Definitions.--As used in this part:

19 (1) "Automatic renewal commission" means a renewal
20 commission for which the brokerage agreement does not
21 expressly require the broker to perform any additional
22 services in order to receive the renewal commission.

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

24 (3) "Brokerage agreement" means a written contract,
25 entered into on or after the effective date of this act,
26 between an owner of commercial real estate and a broker that
27 obligates the owner to pay a commission to the broker for
28 licensed services provided by the broker relating to the
29 leasing of the commercial real estate as specified in the
30 contract.

31

1 (4) "Commercial real estate" means a fee simple
2 interest or other possessory estate in real property except an
3 interest in real property that is:

4 (a) Improved with one single-family residential unit
5 or one multifamily structure containing one to four
6 residential units;

7 (b) Unimproved and the maximum permitted development
8 is one to four residential units under any restrictive
9 covenants, zoning regulations, or comprehensive plan
10 applicable to that real property; or

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

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

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

23 (7) "Lease" means a written agreement creating a
24 relationship of landlord and tenant with respect to commercial
25 real estate, such that the tenant acquires from the landlord
26 the right to possess the commercial real estate for a
27 specified period of time.

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

30 (9) "Owner" means a person that is vested with fee
31 simple title or a possessory estate, including a leasehold, in

1 commercial real estate that is the subject of a lease. For
2 purposes of this part, the owner obligated to pay a commission
3 under a brokerage agreement may be a landlord or a tenant.

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

7 (11) "Renewal commission" means an additional
8 commission that may become payable to a broker under a
9 brokerage agreement if a lease subject to that brokerage
10 agreement is later renewed or is later modified to expand the
11 leased premises or extend the lease term.

12 475.803 Broker's lien for leasing commission.--

13 (1) A broker has a lien upon the owner's interest in
14 commercial real estate for any commission earned by the broker
15 pursuant to a brokerage agreement with respect to a lease of
16 the commercial real estate. If the owner obligated to pay the
17 commission is the landlord, the broker's lien attaches to the
18 landlord's interest in the commercial real estate identified
19 in the brokerage agreement but not to the tenant's leasehold
20 estate. If the owner obligated to pay the commission is the
21 tenant, the broker's lien attaches to the tenant's leasehold
22 estate but not to the landlord's interest in the commercial
23 real estate.

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

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

29 (b) The owner enters into a lease of all or part of
30 the commercial real estate specified in the brokerage
31

1 agreement, provided that a commission would be payable to the
2 broker pursuant to the brokerage agreement for that lease.

3 (3) For the purposes of this part, a renewal
4 commission with respect to a lease renewal or lease
5 modification is deemed earned when the broker performs all
6 additional services relating to the lease renewal or lease
7 modification which are expressly required by the brokerage
8 agreement. If the brokerage agreement does not expressly
9 require the broker to perform any additional services in order
10 to receive the renewal commission, the renewal commission is
11 an automatic renewal commission and is deemed earned when the
12 broker first earned a commission for that lease.

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

18 (5) A broker's lien for commission arising under this
19 part:

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

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

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

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

29 (6) A broker shall disclose to the owner at or before
30 the time the owner executes the brokerage agreement that this
31 part creates lien rights for a commission earned by the broker

1 that are not waivable before the commission is earned by the
2 broker. A broker may not enforce a lien under this part for a
3 commission earned under a brokerage agreement for which the
4 disclosure required by this subsection was not made. A
5 disclosure in substantially the following form shall be
6 sufficient: "The Florida Commercial Real Estate Leasing
7 Commission Lien Act provides that when a broker has earned a
8 commission by performing licensed services under a brokerage
9 agreement with you, the broker may claim a lien against your
10 interest in the property for the broker's commission. The
11 broker's lien rights under the act cannot be waived before the
12 commission is earned."

13 475.805 Contents of lien notice.--

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

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

21 (b) A statement whether the owner obligated to pay the
22 commission is the landlord or the tenant under the lease for
23 which the commission is claimed.

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

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

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

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

1 (g) 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 rents payable under the lease.

5 (h) A description of the lease sufficient to identify
6 the lease for which the commission is claimed, including, if
7 then known to the broker, the names of the landlord and tenant
8 under the lease, the date of the lease, and the identification
9 of the leased premises.

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

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

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

20
21 BROKER'S COMMISSION LIEN NOTICE UNDER
22 FLORIDA COMMERCIAL REAL ESTATE LEASING COMMISSION LIEN ACT
23
24 Notice is hereby given, pursuant to the Florida Commercial
25 Real Estate Leasing Commission Lien Act, part IV of chapter
26 475, Florida Statutes (the "act"), that the undersigned real
27 estate broker is entitled to receive a leasing commission from
28 the owner named below pursuant to the terms of a written
29 brokerage commission agreement regarding a lease of the
30 commercial real estate described below, and the undersigned
31 broker claims a lien under the act against the owner's

1 interest in the commercial real estate in the amount set forth
2 below.
3 1. Name of the owner who is obligated to pay the commission:
4 _____
5 2. (Check one:) The owner obligated to pay the commission is:
6 the landlord under the lease.
7 the tenant under the lease.
8 3. Name of the person owing the fee simple interest in the
9 commercial real estate, if other than the owner who is
10 obligated to pay the commission:
11 _____
12 4. Legal description of the commercial real estate:
13 _____
14 5. Name, mailing address, telephone number, and Florida
15 broker license number of the undersigned broker:
16 _____
17 _____
18 _____
19 6. 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 7. Amount of commission claimed by the undersigned broker:
23 \$ _____, or
24 _____ percent of rents payable under lease, or
25 [specify other formula for determination of commission
26 amount]: _____.
27 8. The lease for which the commission is claimed is described
28 as follows [provide all information known to the broker] :
29 Name of landlord: _____
30 Name of tenant: _____
31 Date of lease: _____,

1 475.807 Recording lien notice; effectiveness.--
2 (1)(a) After a commission is earned under this part,
3 the broker may record a lien notice in the public records
4 maintained by the clerk of court in the county or counties in
5 which the commercial real estate is located. The lien notice
6 shall be recorded no later than the earlier of:
7 1. Ninety days after the tenant takes possession of
8 the leased premises or, in the case of a renewal commission
9 that requires the broker to perform additional services as
10 provided in s. 475.803(3), 90 days after the broker performs
11 the additional services required for the renewal commission;
12 or
13 2. The date on which the owner who is obligated to pay
14 the commission records in the public records a deed or
15 assignment transferring the owner's interest in the commercial
16 real estate to a bona fide purchaser for value.
17 (b) A broker who fails to record a lien notice within
18 the time period prescribed by this section may not enforce a
19 lien for the claimed commission under this part, and a lien
20 notice that is recorded outside of the time period prescribed
21 by this section is void.
22 (2) Within 7 days after recording the lien notice, the
23 broker shall deliver a copy of the lien notice to the owner
24 obligated to pay the claimed commission.
25 (3) The broker's lien created by this part against the
26 commercial real estate is perfected by such recording of the
27 lien notice and takes priority under this part as of the date
28 of the recording of the lien notice. The priority of the lien
29 notice does not relate back to the date of the brokerage
30 agreement.
31

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

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

9 (a) A bona fide purchaser for value of the commercial
10 real estate;

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

13 (c) Any successor owner acquiring the commercial real
14 estate from a purchaser described in paragraph (a) or
15 paragraph (b).

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

24 (7) If a broker records a lien notice pursuant to this
25 section and the claimed commission is paid or the lien notice
26 is otherwise discharged or satisfied pursuant to this part,
27 the broker shall, within 7 days after the commission is paid
28 or the lien notice is otherwise discharged or satisfied,
29 record a written release of the lien notice in the public
30 records of the county where the lien notice was recorded.
31

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

8 (b) To the extent that a lien notice recorded by a
9 broker under this part claims an automatic renewal commission
10 that is earned but not then payable, the lien notice expires
11 10 years after the date of recording, unless within that time
12 the broker commences an action to foreclose the lien under s.
13 475.809 and records a notice of lis pendens in the public
14 records of the county where the lien notice was recorded. If
15 the brokerage agreement remains effective, the broker may
16 extend the expiration date of a lien notice for an automatic
17 renewal commission by recording an extension notice in the
18 same public records within the last 6 months before such
19 expiration date. An extension notice shall refer to the
20 recording information of the original lien notice, shall state
21 that the brokerage agreement remains effective, and shall
22 include the same information and be executed in the same
23 manner as required by s. 475.805(1) for the original lien
24 notice. A timely recorded extension notice shall extend the
25 expiration date of the original recorded lien notice by 10
26 additional years. Successive extension notices may be recorded
27 for so long as the brokerage agreement remains effective
28 between the broker and the owner. Within 10 days after
29 recording an extension notice, the broker shall deliver a copy
30 thereof to the owner.

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

7
8 NOTICE OF CONTEST OF BROKER'S LIEN

9
10 To: _____ (Name and address of broker)

11 You are notified that the undersigned contests the lien notice
12 filed by you on _____, (year), and recorded in Official
13 Records Book _____, Page _____, of the public records of
14 _____ County, Florida, and that the time within which
15 you may file suit to enforce your lien is limited to 60 days
16 from the date of service of this notice. This _____ day of
17 _____, (year) .

18 Signed: _____ (Owner or Attorney)

19
20 The lien of any broker upon whom such a notice of contest is
21 served and who fails to institute a suit to enforce the lien
22 within 60 days after service of such notice of contest shall
23 be extinguished automatically. The clerk shall mail a copy of
24 the notice of contest to the broker at the address shown in
25 the lien notice or most recent amendment thereto and shall
26 certify to such service on the face of the notice of contest
27 and record the notice of contest. Service of the notice of
28 contest by the clerk shall be deemed complete upon mailing.

29 475.809 Foreclosure of lien; civil action by owner;
30 award of costs and attorney's fees.--

31

1 (1) A broker may enforce a lien for a commission that
2 is earned and payable under this part by a foreclosure suit in
3 the same manner as if the lien notice were a mortgage recorded
4 against the commercial real estate of the owner obligated to
5 pay the claimed commission. The foreclosure shall be commenced
6 in the county court or circuit court, whichever may have
7 jurisdiction of controversies in the amount of the claimed
8 commission, of the county where the lien notice was recorded.
9 The foreclosure action shall be commenced before the lien
10 notice expires or is extinguished under s. 475.807(8);
11 otherwise the lien notice shall become null and void and have
12 no further force or effect.

13 (2) If a lien notice is recorded pursuant to s.
14 475.807 and the owner disputes the claimed commission, the
15 owner may file a civil action seeking to discharge the lien in
16 the county court or circuit court, whichever may have
17 jurisdiction of controversies in the amount of the claimed
18 commission, of the county where the lien notice was recorded.

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

22 475.811 Transfer of lien to security.--

23 (1)(a) Any lien claimed by a broker by recording a
24 lien notice under this part may be transferred by any person
25 having an interest in the commercial real estate upon which
26 the lien is imposed from such commercial real estate to other
27 security by either:

- 28 1. Depositing in the clerk's office a sum of money; or
- 29 2. Filing in the clerk's office a bond executed as
30 surety by a surety insurer licensed to do business in this
31 state, either to be in an amount equal to the amount claimed

1 in the lien notice, plus interest thereon at the legal rate
2 for 3 years, plus \$1,000 or 25 percent of the amount demanded
3 in the lien notice, whichever is greater, to apply on any
4 attorney's fees and court costs that may be taxed in any
5 proceeding to enforce said lien.

6 (b) Such deposit or bond shall be conditioned to pay
7 any judgment or decree that may be rendered for the
8 satisfaction of the lien for which such lien notice was
9 recorded. Upon making such deposit or filing such bond, the
10 clerk shall make and record a certificate showing the transfer
11 of the lien from the commercial real estate to the security
12 and shall mail a copy thereof by registered or certified mail
13 to the broker named in the lien notice at the address stated
14 therein. Upon filing the certificate of transfer the
15 commercial real estate shall thereupon be released from the
16 lien claimed and such lien shall be transferred to said
17 security. Subject to any order of the court increasing the
18 amount required for the lien transfer deposit or bond, no
19 other judgment or decree to pay money may be entered by the
20 court against the owner on account of the commission claimed
21 in the lien notice. The clerk shall be entitled to a service
22 charge for making and serving the certificate, in the amount
23 of up to \$15. If the transaction involves the transfer of
24 multiple liens, an additional charge of up to \$7.50 for each
25 additional lien shall be charged. For recording the
26 certificate and approving the bond, the clerk shall receive
27 her or his usual statutory service charges as prescribed in s.
28 28.24. Any number of liens may be transferred to one such
29 security.

30 (2) Any excess of the security over the aggregate
31 amount of any judgments or decrees rendered plus costs

1 actually taxed shall be repaid to the party filing the
2 security or her or his successor in interest. Any deposit of
3 money shall be considered as paid into court and shall be
4 subject to the provisions of law relative to payments of money
5 into court and the disposition of same.

6 (3) In any action pending under s. 475.809 to
7 foreclose or discharge a lien, any party having an interest in
8 such security or the commercial real estate from which the
9 lien was transferred may at any time and any number of times
10 file a motion for an order to require additional security,
11 reduction of security, change or substitution of sureties,
12 payment of discharge thereof, or any other matter affecting
13 said security. If the court finds that the amount of the
14 deposit or bond in excess of the amount claimed in the lien
15 notice is insufficient to pay the broker's attorney's fees and
16 court costs incurred in the action to enforce the lien, the
17 court shall increase the amount of the cash deposit or lien
18 transfer bond.

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

24 475.813 Subordination of lien.--

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

30 (2) With or without the consent of the broker, the
31 owner may subordinate a lien claimed by the broker for an

1 automatic renewal commission in favor of the holder of a
2 subsequent mortgage encumbering the owner's interest in the
3 commercial real estate. The subordination instrument described
4 in this subsection must be made in writing and must be
5 recorded by the owner in the public records of the same county
6 where the lien notice of the broker was recorded.

7 (3) A lien notice of the broker recorded against
8 commercial real estate under this part is subordinate to any
9 mortgage that has at any time secured any purchase money
10 indebtedness, if the mortgage is made by the owner of the
11 commercial real estate in favor of a person unrelated to the
12 owner. This subsection applies only to the relative priority
13 of the lien notice of the broker and the mortgage with respect
14 to each other, and this subsection does not affect their
15 relative priority with respect to any other mortgage, lien,
16 encumbrance, or other matter affecting the title to the
17 commercial real estate.

18 Section 3. Paragraph (j) of subsection (1) of section
19 475.42, Florida Statutes, is amended to read:

20 475.42 Violations and penalties.--

21 (1) VIOLATIONS.--

22 (j) A broker or sales associate may not place, or
23 cause to be placed, upon the public records of any county, any
24 contract, assignment, deed, will, mortgage, affidavit, or
25 other writing which purports to affect the title of, or
26 encumber, any real property if the same is known to her or him
27 to be false, void, or not authorized to be placed of record,
28 or not executed in the form entitling it to be recorded, or
29 the execution or recording whereof has not been authorized by
30 the owner of the property, maliciously or for the purpose of
31 collecting a commission, or to coerce the payment of money to

1 | the broker or sales associate or other person, or for any
2 | unlawful purpose. However, nothing in this paragraph shall be
3 | construed to prohibit a broker or a sales associate from
4 | recording a judgment rendered by a court of this state or to
5 | prohibit a broker from placing a lien on a property where
6 | expressly permitted by contractual agreement or otherwise
7 | allowed by law.

8 | Section 4. This act shall take effect October 1, 2005.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2036

4 The Committee Substitute (CS) creates parts III and IV of ch.
5 475, F.S., and does not create a new ch. 714, F.S., to create
6 the "Commercial Real Estate Sales Lien Act" and the
7 "Commercial Real Estate Leasing Commission Lien Act,"
8 respectively.

9 The CS defines the terms "brokerage agreement," "closing,"
10 "closing agent," "commission notice," "days," "disposition,"
11 "disputed reserved proceeds," "owner," "owners net proceeds,"
12 "real property," "automatic renewal commission," "lease,"
13 "lien notice," and "renewal commission."

14 The CS changes the definition for the term "commercial real
15 estate."

16 The CS does not define the terms "real estate," "transferee,"
17 and "transferor."

18 The CS creates s. 475.703, F.S., to create a lien for a
19 broker's commission on the sale of commercial real estate,
20 provide conditions for the lien, and to require disclosure of
21 the sales commission lien.

22 The CS creates s. 475.705, F.S., to require that the broker
23 provide the owner with a notice of the sales commission
24 claimed by the broker. It also provides the information that
25 must be contained in the notice and the form of the notice.
26 It requires delivery of the notice to the owner and closing
27 agent, and provides conditions for the delivery of the notice.

28 The CS creates s. 475.707, F.S., to provide for the recording
29 of the sales commission notice.

30 The CS creates s. 475.709, F.S., to provide the duties of the
31 closing agent with respect to the sales commission.

32 The CS creates s. 475.711, F.S., to provide for the
33 adjudication of the rights with respect to disputed sales
34 commission proceeds held in escrow.

35 The CS creates s. 475.713, F.S., to provide for civil actions
36 in disputes over the sales commission.

37 The CS creates s. 475.715, F.S., to provide for the priority
38 of recorded liens.

39 The CS creates s. 475.717, F.S., to provide for service of the
40 sales commission notice.

41 The CS creates s. 475.719, F.S., to provide for the rights of
42 a buyer's broker with respect to a sales commission lien.

43 The CS creates ss. 475.800 and 475.801, F.S., to create a
44 short title and provides definitions, respectively.

45 The CS creates s. 475.803, F.S., to create a lien, and

1 | conditions for the lien, for a broker's leasing commission
2 | upon the owner's interest in commercial real estate for any
3 | commission earned by the broker with respect to a lease on
4 | commercial real estate.
5 | The CS creates s. 475.805, F.S., to provide the requirements
6 | for the contents of the lien notice for the broker's leasing
7 | commission.
8 | The CS creates s. 475.807, F.S., to provide conditions for
9 | recording the lien notice for the broker's leasing commission.
10 | The CS creates s. 475.809, F.S., to provide for foreclosure
11 | enforcement of a lien notice for a broker's leasing commission
12 | by foreclosure action.
13 | The CS creates s. 475.811, F.S., to provide for the transfer
14 | of a broker's leasing commission lien to other security.
15 | The CS creates s. 475.813, F.S., to provide for subordination
16 | of a broker's leasing commission lien.
17 | The CS provides an effective date of October 1, 2005.
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