

House Bill No. 1459

An act relating to liens on commercial real estate; creating part III of ch. 475, F.S., the “Commercial Real Estate Sales Commission Lien Act”; providing definitions; specifying conditions under which a broker is entitled to a lien upon the owner’s net proceeds from the disposition of commercial real estate for any commission earned by the broker under a brokerage agreement; providing that the lien cannot be assigned, enforced, or waived by anyone other than the broker; requiring disclosure; providing for the contents of the commission notice and delivery to certain parties; providing a form for the commission notice; providing that a lien may not be enforced if the notice is not delivered to certain parties; providing that the commission notice may be recorded; providing for expiration and extension under certain conditions; providing for release of the commission notice under certain conditions; providing the duties of the closing agent; requiring the closing agent to reserve an owner’s proceeds under certain conditions; providing for the release of proceeds under certain conditions; requiring deduction of certain costs from the proceeds; providing for interpleader or other legal proceedings sought by a closing agent to adjudicate certain rights; providing for the deposit of reserved proceeds in a court registry; providing for the discharge of the closing agent from further liability; providing for a civil action if a dispute arises concerning the proceeds; providing that the prevailing party may recover certain fees and costs incurred in a civil action; establishing the priority of a recorded commission notice; providing for the service of notice; providing that a buyer’s broker is not entitled to a lien; providing certain conditions under which a buyer’s broker may seek payment of a commission; creating part IV of ch. 475, F.S., the “Commercial Real Estate Leasing Commission Lien Act”; providing definitions; providing conditions under which a broker may place a lien upon an owner’s interest in commercial real estate for any commission earned under a brokerage agreement with respect to a lease of commercial real estate; providing that the lien cannot be assigned, enforced, or waived by anyone other than the broker; requiring disclosure; providing for the contents of the lien notice; providing a form for the lien notice; providing that the lien notice may be recorded; providing that a lien may not be enforced if the broker fails to record the notice; providing for effectiveness of a recorded lien notice; providing for release of the lien notice under certain conditions; providing for expiration and extension under certain conditions; providing for foreclosure of a recorded lien under certain conditions; providing a form; providing for a civil action if a dispute arises concerning the proceeds; providing that the prevailing party may recover certain fees and costs incurred in a civil action; providing procedures to transfer a lien to a security; providing that the clerk of court may collect a service charge; providing for subordination of a broker’s lien; amending s. 475.42, F.S.; providing that a broker may place a lien when allowed by law; providing an effective date.

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

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

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

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

(5) “Commercial real estate” means a fee simple interest or other possessory estate in real property, except an interest in real property that is:

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

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

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

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

(7) “Commission notice” means the written notice claiming a commission made by a broker under s. 475.705.

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

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

(10) “Disputed reserved proceeds” means the portion of the owner’s net proceeds reserved by a closing agent under s. 475.709 that the owner disputes the broker’s right to receive such reserved proceeds under s. 475.709(5).

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

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

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

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

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

475.703 Broker’s lien for sales commission.—

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

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

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

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

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

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

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

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

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

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

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

475.705 Contents of commission notice; delivery to owner and closing agent.—

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

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

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

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

(d) The effective date of the brokerage agreement.

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

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

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

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

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

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

Notice is hereby given pursuant to the Florida Commercial Real Estate Sales Commission Lien Act, part III of chapter 475, Florida Statutes (the “act”), that the undersigned real estate broker is entitled to receive a sales commission in the amount set forth below from the owner named below pursuant to the terms of a written brokerage commission agreement regarding the commercial real estate described below, and the undersigned broker claims a lien under the act against the owner’s net proceeds from the disposition of the commercial real estate. The act and this commission notice do not create a lien against the commercial real estate itself, but only against the owner’s net proceeds.

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

2. Legal description of the commercial real estate:
.....

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

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

5. Amount of commission claimed by the undersigned broker:
\$....., or

..... percent of sales price, or

[specify other formula for determination of commission amount]:

.....

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

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

Signed: ...(broker)...

Signed and sworn to or affirmed under penalty of perjury before me, a notary public, this day of,, by

Signed: ...(notary public)...

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

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

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

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

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

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

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

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

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

475.707 Recording commission notice; effectiveness.—

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

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

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

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

(3) A commission notice recorded under this part expires 1 year after the date of recording, unless the brokerage agreement remains effective after the expiration date of the commission notice and the broker records an extension notice in the same public records within the last 60 days before such expiration date. An extension notice shall refer to the recording information of the original commission notice, shall state that the brokerage agreement remains effective, and shall include the information and be executed in the manner as required by s. 475.705(1) for the original commission notice. A timely recorded extension notice shall extend the expiration date of the original recorded commission notice by 1 additional year. Successive extension notices may be recorded for so long as the brokerage agreement remains effective between the broker and the owner. Within 10 days after

recording an extension notice the broker shall deliver a copy thereof to the owner.

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

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

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

475.709 Duties of closing agent; reservation of owner's net proceeds.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

disputes the broker's right to receive all or any portion of the claimed commission, the closing agent shall release to the broker from the reserved proceeds only the undisputed portion of the commission, if any. Until the rights of the owner and the broker with respect to the disputed reserved proceeds are determined pursuant to s. 475.711 or s. 475.713 or the owner and the broker otherwise agree in writing, the closing agent shall not release the disputed reserved proceeds to any person other than to deposit the same in the registry of the court having jurisdiction of the dispute.

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

(a) Five days have passed after the closing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The court shall issue an order releasing the broker's claim of lien against the owner's net proceeds from such disposition, discharging any commission notice that may be have been recorded, ordering the release to

the owner of the disputed reserved proceeds, and awarding costs and reasonable attorney's fees to the owner to be paid by the broker if, following a hearing, the court determines that the owner is not a party to a brokerage agreement that will result in the owner being obligated to pay the broker the claimed commission or any portion thereof with respect to the disposition of the commercial real estate identified in the commission notice. If the court determines that the owner is a party to a brokerage agreement that will result in the owner being obligated to pay the broker the claimed commission or any portion thereof with respect to the disposition of the commercial real estate identified in the commission notice, the court shall issue an order so stating, ordering the release to the broker of the disputed reserved proceeds or such portion thereof to which the court determines that the broker is entitled, and awarding costs and reasonable attorney's fees to the broker to be paid by the owner. Such orders are final judgments.

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

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

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

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

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

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

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

475.715 Priority of recorded commission notice.—All statutory liens, consensual liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, including all advances or charges made or accruing thereunder, whether voluntary or obligatory, and all modifications, extensions, renewals, and replacements thereof, recorded prior to the recording of a commission notice pursuant to the provisions of s. 475.707, have priority over the commission notice, and the amount required to discharge such prior

recorded liens shall be subtracted from gross sales proceeds in computing the owner's net proceeds unless the buyer permits the same to remain a lien against the title to the commercial real estate. A prior recorded lien includes, without limitation, a valid construction lien claim that is recorded after the recording of the broker's commission notice but which relates back to a notice of commencement recorded under s. 713.13 prior to the recording date of the broker's commission notice.

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

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

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

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

(3) No such notice given by the buyer's broker pursuant to subsection (2) shall constitute a tortious interference with the sale or disposition or financing of the commercial real estate, except this section shall not affect the

rights and remedies otherwise available to the owner, the buyer, or the buyer's broker under other applicable law.

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

475.800 Short title.—Sections 475.800-475.813 may be cited as the “Commercial Real Estate Leasing Commission Lien Act.”

475.801 Definitions.—As used in this part:

(1) “Automatic renewal commission” means a renewal commission for which the brokerage agreement does not expressly require the broker to perform any additional services in order to receive the renewal commission.

(2) “Broker” has the same meaning as in s. 475.01.

(3) “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 leasing of the commercial real estate as specified in the contract.

(4) “Commercial real estate” means a fee simple interest or other possessory estate in real property, except an interest in real property that is:

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

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

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

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

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

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

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

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

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

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

475.803 Broker’s lien for leasing commission.—

(1) A broker has a lien upon the owner’s interest in commercial real estate for any commission earned by the broker pursuant to a brokerage agreement with respect to a lease of the commercial real estate. If the owner obligated to pay the commission is the landlord, the broker’s lien attaches to the landlord’s interest in the commercial real estate identified in the brokerage agreement but not to the tenant’s leasehold estate. If the owner obligated to pay the commission is the tenant, the broker’s lien attaches to the tenant’s leasehold estate but not to the landlord’s interest in the commercial real estate.

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

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

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

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

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

(5) A broker’s lien for commission arising under this part:

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

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

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

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

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

475.805 Contents of lien notice.—

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

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

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

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

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

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

(f) The effective date of the brokerage agreement.

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

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

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

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

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

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

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

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

2. (Check one:) The owner obligated to pay the commission is:
 the landlord under the lease.
 the tenant under the lease.

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

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

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

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

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

Signed: ...(broker)...

Signed and sworn to or affirmed under penalty of perjury before me, a notary public, this day of,, by

Signed: ...(notary public)...

475.807 Recording lien notice; effectiveness.—

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

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

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

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

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

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

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

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

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

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

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

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

(7) If a broker records a lien notice pursuant to this section and the claimed commission is paid or the lien notice is otherwise discharged or

satisfied pursuant to this part, the broker shall, within 7 days after the commission is paid or the lien notice is otherwise discharged or satisfied, record a written release of the lien notice in the public records of the county where the lien notice was recorded.

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

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

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

NOTICE OF CONTEST OF BROKER’S LIEN

To: ...(Name and address of broker)...

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

Signed: ...(Owner or Attorney)...

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

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

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

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

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

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

475.811 Transfer of lien to security.—

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

1. Depositing in the clerk's office a sum of money; or

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

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

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

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

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

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

475.813 Subordination of lien.—

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

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

(3) A broker's lien notice recorded against commercial real estate under this part is subordinate to any mortgage that has at any time secured any purchase money indebtedness, provided that the mortgage is made by the owner of the commercial real estate in favor of a person unrelated to the

owner. This subordination provision affects only the relative priority of the broker's lien notice and the mortgage with respect to each other, and this provision does not affect their relative priority with respect to any other mortgage, lien, encumbrance, or other matter affecting the title to the commercial real estate.

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

475.42 Violations and penalties.—

(1) VIOLATIONS.—

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

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

Approved by the Governor June 20, 2005.

Filed in Office Secretary of State June 20, 2005.