

CHAPTER 179

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 10-1288

BY REPRESENTATIVE(S) Nikkel, Rice, Ferrandino, Kerr J., Lambert, Liston, McNulty, Peniston, Priola, Scanlan, Waller, Frangas, Massey, Roberts, Bradford, Vigil;
also SENATOR(S) Williams, Kopp, Penry, Tochtrop, Newell, Schwartz, Steadman.

AN ACT

CONCERNING THE ABILITY OF A COMMERCIAL REAL ESTATE BROKER TO SECURE PAYMENT OF COMMISSIONS EARNED, AND, IN CONNECTION THEREWITH, ENACTING THE "COMMERCIAL REAL ESTATE BROKERS COMMISSION SECURITY ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 22.5
Commercial Real Estate Brokers
Commission Security Act

38-22.5-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "COMMERCIAL REAL ESTATE BROKERS COMMISSION SECURITY ACT".

38-22.5-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AGREEMENT" MEANS A WRITTEN LISTING AGREEMENT, WRITTEN COMPENSATION AGREEMENT, OR OTHER WRITTEN AGREEMENT BETWEEN A REAL ESTATE BROKER AND AN OWNER THAT GRANTS THE REAL ESTATE BROKER A RIGHT TO COMPENSATION FOR PROFESSIONAL SERVICES IN CONNECTION WITH LEASING OR ATTEMPTING TO LEASE COMMERCIAL REAL ESTATE.

(2) "COMMERCIAL REAL ESTATE" MEANS ANY REAL PROPERTY OTHER THAN REAL PROPERTY CONTAINING ONE TO FOUR RESIDENTIAL UNITS. "COMMERCIAL REAL ESTATE" DOES NOT INCLUDE SINGLE-FAMILY OR MULTI-FAMILY RESIDENTIAL UNITS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

INCLUDING CONDOMINIUMS, TOWNHOUSES, OR HOMES IN A SUBDIVISION WHEN SUCH REAL ESTATE IS SOLD, LEASED, OR OTHERWISE CONVEYED ON A UNIT-BY-UNIT BASIS EVEN THOUGH THE UNITS MAY BE PART OF A LARGER BUILDING OR PARCEL OF REAL PROPERTY CONTAINING MORE THAN FOUR RESIDENTIAL UNITS.

(3) "OWNER" MEANS THE OWNER OF RECORD OF REAL ESTATE AND INCLUDES AN AGENT OF SUCH OWNER.

(4) "REAL ESTATE BROKER" HAS THE MEANING SET FORTH IN SECTION 12-61-101, C.R.S.

(5) "RENEWAL COMMISSION" MEANS AN ADDITIONAL COMMISSION THAT MAY BECOME PAYABLE TO A REAL ESTATE BROKER IF A LEASE IS LATER RENEWED OR MODIFIED TO EXPAND THE LEASED PREMISES OR EXTEND THE LEASE TERM.

38-22.5-103. Brokers' lien for compensation for services - requirements.

(1) A REAL ESTATE BROKER SHALL HAVE A LIEN ON COMMERCIAL REAL ESTATE, IN THE AMOUNT OF THE COMPENSATION AS SET FORTH IN THE AGREEMENT, IF:

(a) SUCH REAL ESTATE IS LISTED WITH THE REAL ESTATE BROKER UNDER TERMS OF AN AGREEMENT OR IS THE SUBJECT OF AN AGREEMENT; AND

(b) THE REAL ESTATE BROKER HAS PROVIDED LICENSED SERVICES THAT RESULTED IN THE PROCURING OF A PERSON OR ENTITY WHO HAS LEASED ANY INTEREST IN THE COMMERCIAL REAL ESTATE IN ACCORDANCE WITH THE AGREEMENT.

(2) THE GENERAL ASSEMBLY INTENDS THAT NOTHING IN THIS SECTION IS SUBJECT TO A PROSPECTIVE WAIVER BY EITHER PARTY WITHOUT CONSIDERATION ACCEPTABLE TO THE PARTIES TO THE WAIVER.

(3) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, COMMERCIAL REAL ESTATE IS NOT SUBJECT TO A REAL ESTATE BROKERS' LIEN TO ENFORCE THE PAYMENT OF A RENEWAL COMMISSION IF THE PROPERTY IS CONVEYED TO A BONA FIDE PURCHASER BEFORE THE RECORDING OF A NOTICE OF LIEN PURSUANT TO SECTION 38-22.5-104.

38-22.5-104. Notice of intent - lien notice - service - contents - filing. (1) THE REAL ESTATE BROKER SHALL SERVE A NOTICE OF INTENT TO RECORD A NOTICE OF LIEN UPON THE OWNER AT LEAST THIRTY DAYS BEFORE RECORDING THE NOTICE OF LIEN WITH THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH THE COMMERCIAL REAL ESTATE IS LOCATED. SUCH NOTICE OF INTENT SHALL BE SERVED BY PERSONAL SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE LAST-KNOWN ADDRESS OF THE OWNER OR THE OWNER'S AGENT, AT LEAST THIRTY DAYS BEFORE RECORDING OF THE NOTICE OF LIEN WITH THE COUNTY CLERK AND RECORDER. IF THE NOTICE OF INTENT IS SERVED UPON THE OWNER'S AGENT, A COPY OF THE NOTICE SHALL ALSO BE SERVED UPON THE OWNER OF RECORD BY PERSONAL SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE OWNER'S LAST-KNOWN ADDRESS, AT LEAST THIRTY DAYS BEFORE RECORDING OF THE NOTICE OF LIEN WITH THE COUNTY CLERK AND RECORDER.

(2) THE NOTICE OF LIEN SHALL STATE THE NAME OF THE REAL ESTATE BROKER, THE NAME OF THE OWNER, A LEGAL DESCRIPTION OF THE PROPERTY UPON WHICH THE LIEN IS BEING CLAIMED, THE AMOUNT FOR WHICH THE LIEN IS CLAIMED, AND THE REAL ESTATE LICENSE NUMBER OF THE REAL ESTATE BROKER. THE REAL ESTATE BROKER SHALL SIGN THE NOTICE OF LIEN, AND ATTEST THAT THE INFORMATION CONTAINED IN THE NOTICE IS TRUE AND ACCURATE AS TO HIS OR HER KNOWLEDGE AND BELIEF.

38-22.5-105. Mediation period. THE REAL ESTATE BROKER SHALL MAKE A GOOD FAITH EFFORT TO ATTEMPT TO RESOLVE THE NONPAYMENT OF THE COMMISSION THROUGH MEDIATION. THE MEDIATOR'S RECOMMENDED RESOLUTION IS NOT BINDING UNLESS THE PARTIES SO AGREE IN WRITING. THE PARTIES SHALL JOINTLY APPOINT AN ACCEPTABLE MEDIATOR AND SHALL SHARE EQUALLY IN THE COST OF THE MEDIATION. MEDIATION SHALL COMMENCE WHEN A WRITTEN NOTICE REQUESTING MEDIATION IS DELIVERED BY ONE PARTY TO THE OTHER AT THE PARTY'S LAST-KNOWN ADDRESS, AND, UNLESS OTHERWISE AGREED, THE MEDIATION SHALL TERMINATE IF THE ENTIRE DISPUTE IS NOT RESOLVED WITHIN THIRTY DAYS THEREAFTER. THIS SECTION DOES NOT IMPAIR THE ABILITY OF A REAL ESTATE BROKER TO RECORD A NOTICE OF LIEN IF A RESOLUTION IS NOT AGREED UPON BY BOTH PARTIES.

38-22.5-106. When lien attaches - effect of payment by installments - affirmative defense. (1) THE LIEN CREATED BY SECTION 38-22.5-103 ATTACHES TO AN INTEREST IN COMMERCIAL REAL ESTATE WHEN ALL OF THE FOLLOWING CONDITIONS ARE MET:

(a) THE REAL ESTATE BROKER EITHER:

(I) PROCURES A PERSON OR ENTITY WHO LEASES THE PROPERTY IN ACCORDANCE WITH THE AGREEMENT; OR

(II) HAS OTHERWISE EARNED A FEE OR COMMISSION IN ACCORDANCE WITH THE AGREEMENT;

(b) THE REAL ESTATE BROKER SERVES A NOTICE OF INTENT TO RECORD A NOTICE OF LIEN UPON THE OWNER OR OWNER'S AGENT AS PROVIDED IN SECTION 38-22.5-104;

(c) THE REAL ESTATE BROKER MAKES A GOOD FAITH ATTEMPT TO OBTAIN SETTLEMENT THROUGH MEDIATION AS PROVIDED IN SECTION 38-22.5-105; AND

(d) AT LEAST THIRTY DAYS AFTER SERVING THE OWNER WITH NOTICE OF INTENT TO RECORD A NOTICE OF LIEN, BUT NOT MORE THAN NINETY DAYS AFTER THE TENANT TAKES POSSESSION OF THE LEASED PROPERTY OR NINETY DAYS AFTER THE COMPENSATION IS DUE UNDER THE AGREEMENT, WHICHEVER IS LATER, THE REAL ESTATE BROKER RECORDS A NOTICE OF THE LIEN IN THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE COMMERCIAL REAL ESTATE IS LOCATED.

(2) NOTWITHSTANDING PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION:

(a) IF PAYMENT IS DUE IN INSTALLMENTS AND A PORTION OF THE PAYMENT IS DUE AFTER THE LEASING OF ANY INTEREST IN COMMERCIAL REAL ESTATE, A CLAIM FOR

A LIEN FOR ONLY THAT PORTION MAY BE RECORDED WITHIN NINETY DAYS AFTER THE TENANT TAKES POSSESSION OF THE LEASED PROPERTY OR NINETY DAYS AFTER THE COMPENSATION IS DUE UNDER THE AGREEMENT, WHICHEVER IS LATER; AND

(b) THE LIEN SHALL BE EFFECTIVE AS A LIEN AGAINST THE COMMERCIAL REAL ESTATE ONLY TO THE EXTENT MONEYS ARE STILL OWED TO THE REAL ESTATE BROKER BY THE OWNER. ANY CLAIMS FOR A LIEN FOR FUTURE INSTALLMENT PAYMENTS SHALL ONLY BE RECORDED WITHIN NINETY DAYS AFTER THOSE INSTALLMENT PAYMENTS BECOME DUE IN ACCORDANCE WITH THE AGREEMENT.

(3) THE LIEN ATTACHES FOR PURPOSES OF THIS SECTION WHEN THE CLAIM FOR LIEN IS RECORDED, AND SHALL NOT RELATE BACK TO THE DATE OF THE AGREEMENT.

(4) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, IT SHALL BE AN AFFIRMATIVE DEFENSE IN AN ACTION TO FORECLOSE A LIEN PURSUANT TO THIS ARTICLE THAT THE OWNER HAS PAID ANY COMPENSATION OWED TO THE LISTING BROKER IN AN AMOUNT SUFFICIENT TO SATISFY THE CONTRACTUAL AND LEGAL OBLIGATIONS OF THE OWNER, INCLUDING COMPENSATION TO THE TENANT'S BROKER.

38-22.5-107. Conditions on validity of lien - subsequent service of notice to owner - action commenced within six months. (1) NO LIEN CLAIMED BY VIRTUE OF THIS ARTICLE SHALL HOLD THE PROPERTY LONGER THAN TEN DAYS AFTER THE RECORDING OF THE NOTICE OF LIEN UNDER SECTION 38-22.5-104 UNLESS THE REAL ESTATE BROKER PROVIDES A COPY OF THE NOTICE OF LIEN TO THE OWNER OR OWNER'S AGENT BY PERSONAL SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE LAST-KNOWN ADDRESS OF SUCH PERSON, WITHIN TEN DAYS AFTER RECORDING THE NOTICE OF LIEN.

(2) NO LIEN CLAIMED BY VIRTUE OF THIS ARTICLE SHALL HOLD THE PROPERTY LONGER THAN SIX MONTHS AFTER THE RECORDING OF THE NOTICE OF LIEN UNDER SECTION 38-22.5-104 UNLESS AN ACTION TO FORECLOSE THE LIEN HAS BEEN COMMENCED WITHIN THAT TIME, AND UNLESS ALSO A NOTICE STATING THAT SUCH ACTION HAS BEEN COMMENCED IS FILED FOR RECORD WITHIN THAT TIME IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH THE PROPERTY IS SITUATED. WHERE TWO OR MORE LIENS UNDER THIS ARTICLE ARE CLAIMED OF RECORD AGAINST THE SAME PROPERTY, THE COMMENCEMENT OF ANY ACTION AND THE FILING OF THE NOTICE OF THE COMMENCEMENT OF SUCH ACTION WITHIN THAT TIME BY ANY ONE OR MORE OF SUCH LIEN CLAIMANTS IN WHICH ACTION ALL THE LIEN CLAIMANTS AS APPEAR OF RECORD ARE MADE PARTIES, EITHER PLAINTIFF OR DEFENDANT, SHALL BE SUFFICIENT.

38-22.5-108. Priority of liens. THE PRIORITY OF A LIEN CREATED UNDER THIS ARTICLE IN RELATION TO OTHER INTERESTS IN THE SUBJECT PROPERTY SHALL BE DETERMINED IN ACCORDANCE WITH SECTION 38-35-109.

38-22.5-109. Satisfaction or release of brokers' lien - written demand by owner - obligation to record. IF A REAL ESTATE BROKERS' LIEN HAS BEEN RECORDED PURSUANT TO SECTION 38-22.5-106 AND THE INDEBTEDNESS HAS BEEN PAID IN FULL OR THE LIEN IS NOT VALID AND ENFORCEABLE IN ACCORDANCE WITH THIS ARTICLE AND OTHER APPLICABLE LAW, THE REAL ESTATE BROKER SHALL

ACKNOWLEDGE SATISFACTION OR RELEASE OF SUCH LIEN IN WRITING WITHIN TEN DAYS AFTER RECEIVING WRITTEN DEMAND FROM THE OWNER AND SHALL RECORD A WRITTEN RELEASE OR SATISFACTION OF THE LIEN IN THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

38-22.5-110. Spurious liens. SECTION 38-35-204 APPLIES TO LIENS ASSERTED PURSUANT TO THIS ARTICLE.

38-22.5-111. Substitution of bond allowed - lien to be discharged. (1) WHENEVER A BROKERS' LIEN HAS BEEN RECORDED IN ACCORDANCE WITH THIS ARTICLE, THE OWNER OF ANY INTEREST IN THE PROPERTY SUBJECT TO THE LIEN MAY, AT ANY TIME, FILE WITH THE CLERK OF THE DISTRICT COURT OF THE COUNTY WHEREIN THE PROPERTY IS SITUATED A CORPORATE SURETY BOND OR SIMILAR FINANCIAL ASSURANCE. SUCH BOND OR ASSURANCE SHALL BE IN AN AMOUNT EQUAL TO ONE AND ONE-HALF TIMES THE AMOUNT OF THE LIEN PLUS COSTS ALLOWED TO DATE AND IS SUBJECT TO APPROVAL BY A JUDGE OF THE DISTRICT COURT WITH WHICH SUCH BOND OR ASSURANCE IS FILED.

(2) THE BOND OR ASSURANCE SHALL BE CONDITIONED THAT, IF THE LIEN CLAIMANT IS FINALLY ADJUDGED TO BE ENTITLED TO RECOVER ON THE CLAIM UPON WHICH THE LIEN IS BASED, THE PRINCIPAL OR SURETY SHALL PAY TO SUCH CLAIMANT THE AMOUNT OF THE JUDGMENT, INCLUDING ANY INTEREST, COSTS, OR OTHER SUMS TO WHICH THE CLAIMANT WOULD BE ENTITLED UPON FORECLOSURE OF THE LIEN.

(3) UPON THE FILING OF A BOND OR UNDERTAKING AS PROVIDED IN THIS SECTION, THE LIEN AGAINST THE PROPERTY SHALL BE IMMEDIATELY DISCHARGED AND RELEASED IN FULL, AND THE REAL PROPERTY DESCRIBED IN SUCH BOND OR UNDERTAKING SHALL BE RELEASED FROM THE LIEN AND FROM ANY ACTION BROUGHT TO FORECLOSE THE LIEN, AND THE BOND OR UNDERTAKING SHALL BE SUBSTITUTED. THE CLERK OF THE DISTRICT COURT WITH WHICH THE BOND OR UNDERTAKING HAS BEEN FILED SHALL ISSUE A CERTIFICATE OF RELEASE, WHICH SHALL BE RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE ORIGINAL REAL ESTATE BROKERS' LIEN WAS FILED, AND THE CERTIFICATE OF RELEASE SHALL SHOW THAT THE PROPERTY HAS BEEN RELEASED FROM THE LIEN AND FROM ANY ACTION BROUGHT TO FORECLOSE THE LIEN.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to cases in which an agreement, as defined in section 38-22.5-102, Colorado Revised Statutes, is entered into on or after the applicable effective date of this act.

Approved: April 29, 2010