

Protecting Commercial Real Estate Commissions and the Commercial Real Estate Sales Commission Lien Act

Until the passage of Florida Statutes § 475.700 - § 475.719 (the “Commercial Real Estate Sales Commission Lien Act”) a real estate broker could only perfect a lien for the recovery of a commission if (a) the lien was provided for specifically by contract or (b) the broker had already obtained a judgment determining entitlement to the lien in question. What that sometimes meant was that if a contract didn’t properly provide for it, a broker often had no means of tying up money arising out of the sale or otherwise holding up a sale to secure a commission. While that still remains a difficulty in the residential real estate setting, the Commercial Real Estate Sales Commission Lien Act (hereinafter the “Act”) has modified that rule with regard to commercial real estate deals.

Under the Act, a broker has a lien upon the owner’s net proceeds from the sale of commercial real estate for any commission earned by the broker pursuant to a brokerage agreement regarding the disposition of that particular property. What that means is that through compliance with the Act, either a buyer or seller’s broker has the ability to obtain a lien upon the actual net proceeds the seller realizes from the sale of commercial real estate. The lien is on personal property (e.g., cash). It does not attach to any interest in real property, including the property being sold.

To perfect a lien under the Act, the broker must properly prepare, file, and deliver a “commission notice” in compliance with specific statutory requirements set forth by the Act. Following delivery of the commission notice to all required parties, the broker may then record the commission notice in the public records. Once recorded, the lien is “perfected” and will secure the broker’s rights and position, having priority over most other liens recorded after that time. Unless otherwise extended pursuant to the Act, the commission notice lasts for one year after it is recorded.

In addition to giving the broker the protections discussed above, the Act places clear statutory obligations and duties upon the closing agent, which include, among other things, reserving an amount from the owner’s/seller’s net proceeds equal to the commission claimed by the broker. A failure on the part of the closing agent to comply with the Act leaves the closing agent potentially liable to the broker for recovery of the commission in question. Finally, the Act provides for the recovery of attorney’s fees and costs to the prevailing party in a dispute related to the underlying commission.

The Commercial Real Estate Sales Commission Lien Act is a relatively new statute that has been amended since its passage, with other potential amendments pending. Accordingly, keeping up to date with the legislature will be crucial for all those looking to take advantage of the law in this area. At this point, however, at least the following is clear: (a) In terms of the closing agent, the receiving or locating of a commission notice

should be a new item added to any closing checklist; (b) In terms of the broker, the legislature has provided a means to further protect your commercial real estate commissions, but you must seek the ends!

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