

## Know the Law: Get the Commercial Lien Advantage



### Get the Commercial Lien Advantage

**Brokers won't be forced to choose between renegotiating commission at the closing table and chasing it afterward.**

If you intend to take advantage of the Florida Commercial Real Estate Sales Commission Lien Law, which takes effect Oct. 1, 2005, take a close look at this complex law and what you're doing to comply.

"If you adjust your business practices and take the necessary steps from the beginning, you'll be in a much better position to receive your earned commission," says Trey Goldman, the Florida Association of Realtors'® (FAR's) legislative counsel, who was involved in crafting the act that became law when Gov. Jeb Bush signed it June 2005. "Waiting until closing is too late."

The law applies only if there's a proper written agreement between a real estate broker and a property owner that obligates the owner to pay commission to the broker for the performance of licensed services. The law does not apply to buyer's brokers.

#### 5 Steps to Take

1. Determine if the law applies to the kind of property being sold. The lien law applies to all property except single-family residential; multifamily property with one to four units; condominiums; town houses; timeshares; and mobile homes.
2. Include the following disclosure, required by the new law, in your brokerage agreement:

The Florida Commercial Real Estate Sales Commission Lien Law 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 law cannot be waived before the commission is earned.

Lease agreements require a similar disclosure, and an "owner" can be either a landlord or a tenant. Check Chapter 475, parts 3 and 4, Florida Statutes, for specific language.

3. With the proper agreement in place, earn your commission by performing the

services that lead to a sales contract or lease.

4. You've now reached a critical juncture: You may elect to provide a commission notice to the owner and closing agent. (Similar steps apply in lease transactions; check the statute for details.) If you forgo this step, it's unlikely you'll have another chance to invoke the lien law.

The commission notice language is contained in the law, so be sure to use the form specified. It includes a notice to the owner on how to proceed if he or she disputes the commission. The notice must be notarized and a copy delivered to the owner and the closing agent no later 30 days after the commission is earned and at least one day prior to closing. The law sets forth delivery requirements (certified or registered mail, ways to deliver the document electronically, etc.)

5. If, after all the aforementioned steps have been taken, the seller — the person obligated to pay you a commission under your brokerage agreement — refuses to pay the commission, the closing agent will set aside the commission amount from the seller's net proceeds. If you're still at odds with the seller five days after closing, the closing agent will turn the monies over to the court (less the closing agent's fees).

"This is the lien law's greatest asset," says Goldman. "If you apply the law to your business practices correctly from the get-go, either you will be paid at closing or the closing agent will set aside the amount in dispute from the rest of the owner's net proceeds. Brokers won't be forced to choose between renegotiating their commissions at the closing table and chasing it after the closing.

"Take the time to understand the law," Goldman counsels. "It will seem complex at first, but over time, you'll learn how to use it to your advantage."

If you have questions, call FAR's Legal Hotline, (407) 438-1409, or "seek counsel from your own attorney until you're comfortable with the law's requirements," says Goldman.

The 54-page act is now a complex law that commercial practitioners should read through and refer to for required disclosures and notices. To read the law, go online at <http://www.leg.state.fl.us> and in Search Statutes 2005, search the phrase Commercial Real Estate Sales Commission Lien Act.

Questions, comments or suggestions on this article? Send us an e-mail: [flrealtor@far.org](mailto:flrealtor@far.org).

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