

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0843.01 Duane Gall

HOUSE BILL 10-1288

HOUSE SPONSORSHIP

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A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Existing law allows architects, building contractors, auto mechanics, and others to enforce debts through creation of a lien on real

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
March 9, 2010

HOUSE
Amended 2nd Reading
March 8, 2010

or personal property. The bill extends this enforcement mechanism to real estate brokers who procure tenants for commercial real estate, either under a listing agreement or a written compensation agreement.

The bill places conditions on the real estate broker's right to the lien, including an obligation to seek mediation of the dispute; to give notice of the intent to pursue enforcement of the debt through the lien process, both before and after recording the notice of lien; and to commence a lawsuit within 6 months if the debt is not paid.

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

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

4 **ARTICLE 22.5**

5 **Commercial Real Estate Brokers**

6 **Commission Security Act**

7 **38-22.5-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND
8 MAY BE CITED AS THE "COMMERCIAL REAL ESTATE BROKERS
9 COMMISSION SECURITY ACT".

10 **38-22.5-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
11 CONTEXT OTHERWISE REQUIRES:

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

18 (2) "COMMERCIAL REAL ESTATE" MEANS ANY REAL PROPERTY
19 OTHER THAN REAL PROPERTY CONTAINING ONE TO FOUR RESIDENTIAL
20 UNITS. "COMMERCIAL REAL ESTATE" DOES NOT INCLUDE SINGLE-FAMILY
21 OR MULTI-FAMILY RESIDENTIAL UNITS INCLUDING CONDOMINIUMS,

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

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

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

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

13 **38-22.5-103. Brokers' lien for compensation for services -**
14 **requirements.** (1) A REAL ESTATE BROKER SHALL HAVE A LIEN ON
15 COMMERCIAL REAL ESTATE, IN THE AMOUNT OF THE COMPENSATION AS
16 SET FORTH IN THE AGREEMENT, IF:

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

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

24 (2) THE LIEN CREATED BY THIS SECTION MAY BE WAIVED BY
25 MEANS OF A WRITTEN WAIVER, SIGNED BY THE REAL ESTATE BROKER, AT
26 ANY TIME AFTER THE REAL ESTATE BROKER HAS EARNED THE RIGHT TO
27 COMPENSATION IN ACCORDANCE WITH THE LISTING AGREEMENT OR

1 COMPENSATION AGREEMENT.

2

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

8 **38-22.5-104. Notice of intent - lien notice - service - contents -**

9 **filing.** (1) THE REAL ESTATE BROKER SHALL SERVE A NOTICE OF INTENT
10 TO RECORD A NOTICE OF LIEN UPON THE OWNER AT LEAST THIRTY DAYS
11 BEFORE RECORDING THE NOTICE OF LIEN WITH THE COUNTY CLERK AND
12 RECORDER OF THE COUNTY IN WHICH THE COMMERCIAL REAL ESTATE IS
13 LOCATED. SUCH NOTICE OF INTENT SHALL BE SERVED BY PERSONAL
14 SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT
15 REQUESTED, ADDRESSED TO THE LAST-KNOWN ADDRESS OF THE OWNER OR
16 THE OWNER'S AGENT, AT LEAST THIRTY DAYS BEFORE RECORDING OF THE
17 NOTICE OF LIEN WITH THE COUNTY CLERK AND RECORDER. IF THE NOTICE
18 OF INTENT IS SERVED UPON THE OWNER'S AGENT, A COPY OF THE NOTICE
19 SHALL ALSO BE SERVED UPON THE OWNER OF RECORD BY PERSONAL
20 SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT
21 REQUESTED, ADDRESSED TO THE OWNER'S LAST-KNOWN ADDRESS, AT
22 LEAST THIRTY DAYS BEFORE RECORDING OF THE NOTICE OF LIEN WITH THE
23 COUNTY CLERK AND RECORDER.

24 (2) THE NOTICE OF LIEN SHALL STATE THE NAME OF THE REAL
25 ESTATE BROKER, THE NAME OF THE OWNER, A LEGAL DESCRIPTION OF THE
26 PROPERTY UPON WHICH THE LIEN IS BEING CLAIMED, THE AMOUNT FOR
27 WHICH THE LIEN IS CLAIMED, AND THE REAL ESTATE LICENSE NUMBER OF

1 THE REAL ESTATE BROKER. THE REAL ESTATE BROKER SHALL SIGN THE
2 NOTICE OF LIEN, AND ATTEST THAT THE INFORMATION CONTAINED IN THE
3 NOTICE IS TRUE AND ACCURATE AS TO HIS OR HER KNOWLEDGE AND
4 BELIEF.

5 **38-22.5-105. Mediation period.** THE REAL ESTATE BROKER
6 SHALL MAKE A GOOD FAITH EFFORT TO ATTEMPT TO RESOLVE THE
7 NONPAYMENT OF THE COMMISSION THROUGH MEDIATION. THE
8 MEDIATOR'S RECOMMENDED RESOLUTION IS NOT BINDING UNLESS THE
9 PARTIES SO AGREE IN WRITING. THE PARTIES SHALL JOINTLY APPOINT AN
10 ACCEPTABLE MEDIATOR AND SHALL SHARE EQUALLY IN THE COST OF THE
11 MEDIATION. MEDIATION SHALL COMMENCE WHEN A WRITTEN NOTICE
12 REQUESTING MEDIATION IS DELIVERED BY ONE PARTY TO THE OTHER AT
13 THE PARTY'S LAST-KNOWN ADDRESS, AND, UNLESS OTHERWISE AGREED,
14 THE MEDIATION SHALL TERMINATE IF THE ENTIRE DISPUTE IS NOT
15 RESOLVED WITHIN THIRTY DAYS THEREAFTER. THIS SECTION DOES NOT
16 IMPAIR THE ABILITY OF A REAL ESTATE BROKER TO RECORD A NOTICE OF
17 LIEN IF A RESOLUTION IS NOT AGREED UPON BY BOTH PARTIES.

18 **38-22.5-106. When lien attaches - effect of payment by**
19 **installments - affirmative defense.** (1) THE LIEN CREATED BY SECTION
20 38-22.5-103 ATTACHES TO AN INTEREST IN COMMERCIAL REAL ESTATE
21 WHEN ALL OF THE FOLLOWING CONDITIONS ARE MET:

22 (a) THE REAL ESTATE BROKER EITHER:

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

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

27 (b) THE REAL ESTATE BROKER SERVES A NOTICE OF INTENT TO

1 RECORD A NOTICE OF LIEN UPON THE OWNER OR OWNER'S AGENT AS
2 PROVIDED IN SECTION 38-22.5-104;

3 (c) THE REAL ESTATE BROKER MAKES A GOOD FAITH ATTEMPT TO
4 OBTAIN SETTLEMENT THROUGH MEDIATION AS PROVIDED IN SECTION
5 38-22.5-105; AND

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

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

16 (a) IF PAYMENT IS DUE IN INSTALLMENTS AND A PORTION OF THE
17 PAYMENT IS DUE AFTER THE LEASING OF ANY INTEREST IN COMMERCIAL
18 REAL ESTATE, A CLAIM FOR A LIEN FOR ONLY THAT PORTION MAY BE
19 RECORDED WITHIN NINETY DAYS AFTER THE TENANT TAKES POSSESSION
20 OF THE LEASED PROPERTY OR NINETY DAYS AFTER THE COMPENSATION IS
21 DUE UNDER THE ___ AGREEMENT, WHICHEVER IS LATER; AND

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

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

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

10 **38-22.5-107. Conditions on validity of lien - subsequent service**
11 **of notice to owner - action commenced within six months.** (1) NO
12 LIEN CLAIMED BY VIRTUE OF THIS ARTICLE SHALL HOLD THE PROPERTY
13 LONGER THAN TEN DAYS AFTER THE RECORDING OF THE NOTICE OF LIEN
14 UNDER SECTION 38-22.5-104 UNLESS THE REAL ESTATE BROKER PROVIDES
15 A COPY OF THE NOTICE OF LIEN TO THE OWNER OR OWNER'S AGENT BY
16 PERSONAL SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN
17 RECEIPT REQUESTED, ADDRESSED TO THE LAST-KNOWN ADDRESS OF SUCH
18 PERSON, WITHIN TEN DAYS AFTER RECORDING THE NOTICE OF LIEN.

19 (2) NO LIEN CLAIMED BY VIRTUE OF THIS ARTICLE SHALL HOLD THE
20 PROPERTY LONGER THAN SIX MONTHS AFTER THE RECORDING OF THE
21 NOTICE OF LIEN UNDER SECTION 38-22.5-104 UNLESS AN ACTION TO
22 FORECLOSE THE LIEN HAS BEEN COMMENCED WITHIN THAT TIME, AND
23 UNLESS ALSO A NOTICE STATING THAT SUCH ACTION HAS BEEN
24 COMMENCED IS FILED FOR RECORD WITHIN THAT TIME IN THE OFFICE OF
25 THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH THE
26 PROPERTY IS SITUATED. WHERE TWO OR MORE LIENS UNDER THIS ARTICLE
27 ARE CLAIMED OF RECORD AGAINST THE SAME PROPERTY, THE

1 COMMENCEMENT OF ANY ACTION AND THE FILING OF THE NOTICE OF THE
2 COMMENCEMENT OF SUCH ACTION WITHIN THAT TIME BY ANY ONE OR
3 MORE OF SUCH LIEN CLAIMANTS IN WHICH ACTION ALL THE LIEN
4 CLAIMANTS AS APPEAR OF RECORD ARE MADE PARTIES, EITHER PLAINTIFF
5 OR DEFENDANT, SHALL BE SUFFICIENT.

6 **38-22.5-108. Priority of liens. THE PRIORITY OF A LIEN CREATED**
7 **UNDER THIS ARTICLE IN RELATION TO OTHER INTERESTS IN THE SUBJECT**
8 **PROPERTY SHALL BE DETERMINED IN ACCORDANCE WITH SECTION**
9 **38-35-109.**

10 **38-22.5-109. Satisfaction or release of brokers' lien - written**
11 **demand by owner - obligation to record.** IF A REAL ESTATE BROKERS'
12 LIEN HAS BEEN RECORDED PURSUANT TO SECTION 38-22.5-106 AND THE
13 INDEBTEDNESS HAS BEEN PAID IN FULL OR THE LIEN IS NOT VALID AND
14 ENFORCEABLE IN ACCORDANCE WITH THIS ARTICLE AND OTHER
15 APPLICABLE LAW, THE REAL ESTATE BROKER SHALL ACKNOWLEDGE
16 SATISFACTION OR RELEASE OF SUCH LIEN IN WRITING WITHIN TEN DAYS
17 AFTER RECEIVING WRITTEN DEMAND FROM THE OWNER AND SHALL
18 RECORD A WRITTEN RELEASE OR SATISFACTION OF THE LIEN IN THE OFFICE
19 OF THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE PROPERTY IS
20 LOCATED.

21 **38-22.5-110. Spurious liens.** SECTION 38-35-204 APPLIES TO
22 LIENS ASSERTED PURSUANT TO THIS ARTICLE.

23 **38-22.5-111. Substitution of bond allowed - lien to be**
24 **discharged.** (1) WHENEVER A BROKERS' LIEN HAS BEEN RECORDED IN
25 ACCORDANCE WITH THIS ARTICLE, THE OWNER OF ANY INTEREST IN THE
26 PROPERTY SUBJECT TO THE LIEN MAY, AT ANY TIME, FILE WITH THE CLERK
27 OF THE DISTRICT COURT OF THE COUNTY WHEREIN THE PROPERTY IS

1 SITUATED A CORPORATE SURETY BOND OR SIMILAR FINANCIAL
2 ASSURANCE. SUCH BOND OR ASSURANCE SHALL BE IN AN AMOUNT EQUAL
3 TO ONE AND ONE-HALF TIMES THE AMOUNT OF THE LIEN PLUS COSTS
4 ALLOWED TO DATE AND IS SUBJECT TO APPROVAL BY A JUDGE OF THE
5 DISTRICT COURT WITH WHICH SUCH BOND OR ASSURANCE IS FILED.

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

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

25 **SECTION 2. Act subject to petition - effective date -**
26 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
27 following the expiration of the ninety-day period after final adjournment

1 of the general assembly (August 11, 2010, if adjournment sine die is on
2 May 12, 2010); except that, if a referendum petition is filed pursuant to
3 section 1 (3) of article V of the state constitution against this act or an
4 item, section, or part of this act within such period, then the act, item,
5 section, or part shall not take effect unless approved by the people at the
6 general election to be held in November 2010 and shall take effect on the
7 date of the official declaration of the vote thereon by the governor.

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