

SENATE BILL NO. 314

INTRODUCED BY L. JENT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A LIEN AGAINST AN OWNER'S NET SALES
5 PROCEEDS FROM THE SALE OF REAL PROPERTY FOR COMPENSATION OWED TO A LICENSED REAL
6 ESTATE BROKER, LICENSED REAL ESTATE SALESPERSON, LICENSED PROPERTY MANAGER,
7 LICENSED APPRAISER, OR CERTIFIED APPRAISER; PROVIDING FOR A LIEN AGAINST REAL PROPERTY
8 FOR COMPENSATION OWED TO A LICENSED REAL ESTATE BROKER, LICENSED REAL ESTATE
9 SALESPERSON, LICENSED PROPERTY MANAGER, LICENSED APPRAISER, OR CERTIFIED APPRAISER
10 INVOLVING THE LEASE OF REAL PROPERTY; AMENDING SECTIONS 70-32-202 AND 71-3-124, MCA; AND
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14

15 **Section 1.** Section 70-32-202, MCA, is amended to read:

16 **"70-32-202. Execution allowed under certain judgments.** The homestead is subject to execution or
17 forced sale in satisfaction of judgments obtained:

18 (1) on debts secured by construction or vendors' liens upon the premises;

19 (2) on debts secured by liens provided for in [sections 3 through 20];

20 ~~(2)(3)~~ on debts secured by mortgages on the premises, executed and acknowledged by the husband
21 and wife or by an unmarried claimant; or

22 ~~(3)(4)~~ on debts secured by mortgages on the premises, executed and recorded before the declaration
23 of homestead was filed for record."

24

25 **Section 2.** Section 71-3-124, MCA, is amended to read:

26 **"71-3-124. Filing costs and attorney fees to be recovered on foreclosure of liens -- offer of**
27 **judgment.** (1) In an action to foreclose any of the liens provided for in Title 71, chapter 3, part 3, 4, 5, 6, 8, 10,
28 or 16, or [sections 3 through 20], the court shall allow as costs the money paid and attorney fees incurred for filing
29 and recording the lien and reasonable attorney fees in the district and supreme courts. The costs and attorney
30 fees must be allowed to each claimant whose lien is established, and the reasonable attorney fees must be

1 allowed to the defendant against whose property a lien is claimed if the lien is not established.

2 (2) In an action to foreclose any of the liens provided for in Title 71, chapter 3, part 3, 4, 5, 6, 8, 10, or
3 16, or [sections 3 through 20], a defendant may make an offer of judgment as authorized in Rule 68, M.R.Civ.P.
4 If the lienholder rejects the offer to allow judgment to be taken against the defendant and the lienholder obtains
5 a judgment that is not more favorable than the offer, the lienholder shall, in addition to the costs allowed under
6 Rule 68, M.R.Civ.P., pay the attorney fees incurred after the offer is made."

7
8 **NEW SECTION. Section 3. Definitions.** As used in [sections 3 through 11], the following definitions
9 apply:

10 (1) "Agreement" means a written contract between an owner of real property and a broker, salesperson,
11 property manager, licensed appraiser, or certified appraiser that obligates the owner to pay compensation to the
12 broker, salesperson, property manager, licensed appraiser, or certified appraiser for licensed services relating
13 to the sale or disposition of real property.

14 (2) "Broker" means a real estate broker who has a valid real estate broker's license issued under
15 37-51-301.

16 (3) "Certified appraiser" means a real estate appraiser who has a valid real estate appraisal certificate
17 issued under 37-54-305.

18 (4) "Claimant" means a broker, salesperson, property manager, licensed appraiser, or certified appraiser
19 entitled to claim a lien for compensation as provided in [sections 3 through 11].

20 (5) "Closing agent" means the person who receives documents and funds for recording and
21 disbursement in closing a transaction for the disposition of real property.

22 (6) "Compensation" means a fee or other compensation that an owner agrees to pay to a broker,
23 salesperson, property manager, licensed appraiser, or certified appraiser, as specified in an agreement.

24 (7) "Disposition" means a voluntary conveyance or transfer of the title to or other ownership interest in
25 any real property specified in an agreement. A disposition does not include a transfer pursuant to a foreclosure
26 sale and does not include a lease.

27 (8) "Disputed reserved proceeds" means the portion of the owner's net proceeds reserved by a closing
28 agent under [section 7] that the owner disputes that the claimant is entitled to under [section 7(5)].

29 (9) "Licensed appraiser" means a real estate appraiser who holds a current valid real estate appraiser
30 license issued under 37-54-201.

- 1 (10) "Lien notice" means the written notice of lien made by a claimant under [section 5].
- 2 (11) "Owner" means a person vested with fee simple title or a possessory estate in real property.
- 3 (12) "Owner's net proceeds" means the gross sales proceeds that the owner is entitled to receive from
- 4 the disposition of the real property specified in the agreement, less all of the following:
- 5 (a) the amount of money secured by any encumbrance, claim, or lien that has priority over the lien notice
- 6 as provided in [section 9]; and
- 7 (b) any costs incurred by the owner to close the disposition, including but not limited to title insurance
- 8 premiums, taxes and assessments, and escrow fees payable by the owner pursuant to a contract with the buyer.
- 9 (13) "Property manager" means a property manager who has met the qualifications for licensure as a
- 10 property manager as provided in 37-51-601.
- 11 (14) "Salesperson" means a real estate salesperson who has a valid real estate salesperson's license
- 12 issued under 37-51-301.
- 13 (15) "Supervising broker" has the meaning provided in 37-51-102.

14

15 **NEW SECTION. Section 4. Lien for compensation on net proceeds -- disposition of real property.**

- 16 (1) A claimant has a lien upon an owner's net proceeds from the disposition of real property for any compensation
- 17 earned as provided in an agreement. The lien attaches only to the owner's net proceeds and does not attach to
- 18 any interest in real property.
- 19 (2) A lien for compensation arising under [sections 3 through 11]:
- 20 (a) may not be assigned voluntarily or by operation of law and may not be enforced by a person other
- 21 than the claimant named in the agreement;
- 22 (b) may not be waived before the compensation is earned; and
- 23 (c) if the claimant is a salesperson, may not be enforced or waived without written authorization from the
- 24 salesperson's supervising broker.
- 25 (3) At or before the time the owner executes an agreement, the claimant shall disclose that [sections 3
- 26 through 11] create lien rights for compensation earned by a claimant that are not waivable before the
- 27 compensation is earned. A claimant may not enforce a lien under [sections 3 through 11] for which the disclosure
- 28 required by this subsection was not made. A disclosure in substantially the following form is sufficient: "Montana
- 29 law provides that when a licensed real estate broker, licensed real estate salesperson, licensed property
- 30 manager, licensed appraiser, or certified appraiser has earned compensation by performing licensed services

1 under an agreement with you, they may claim a lien for the compensation owing against your net sales proceeds
 2 from the sale of real property. These lien rights may not be waived before the compensation is earned."

3
 4 **NEW SECTION. Section 5. Contents of lien notice -- delivery to owner and closing agent.** (1) A
 5 lien notice provided by a claimant with respect to compensation claimed under [sections 3 through 11] must be
 6 in writing, must be signed and sworn to or affirmed by the claimant under penalty of perjury before a notary public,
 7 and must include the following:

8 (a) the name of the owner who is obligated to pay the claimed compensation;

9 (b) the legal description of the real property;

10 (c) the name, mailing address, and telephone number of the claimant;

11 (d) the effective date of the agreement;

12 (e) the amount of the compensation claimed by the claimant, which may be stated in a dollar amount
 13 or may be stated in the form of a formula determining the amount, such as a percentage of the sales price of the
 14 real property;

15 (f) a statement that the claimant has read the lien notice, knows its contents and believes the contents
 16 to be true and correct, and makes the claim for compensation pursuant to the agreement described in the lien
 17 notice;

18 (g) a statement that the lien notice or a copy of the notice has been delivered to the owner and that the
 19 lien notice may be recorded in the public records of the county or counties where the real property is located; and

20 (h) a statement that if the owner disputes the claimed compensation the owner shall notify the closing
 21 agent of the dispute not later than 5 days after the closing or be considered to have confirmed the compensation
 22 and that [sections 3 through 11] will require the closing agent to pay the compensation to the claimant out of the
 23 owner's net proceeds from the disposition of the real property.

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

25 "NOTICE OF LIEN FOR SALE OF REAL PROPERTY

26 Notice is hereby given that the undersigned is entitled to receive compensation in the amount set forth
 27 below from the owner named below pursuant to the terms of a written agreement regarding the sale of the real
 28 property described below and that the undersigned claims a lien against the owner's net proceeds from the
 29 disposition of the real property. This lien notice does not create a lien against the real property itself, but only
 30 against the owner's net proceeds.

- 1 1. Name of the owner who is obligated to pay the compensation:
- 2 2. Legal description of the real property:
- 3 3. Name, mailing address, and telephone number of the undersigned:
- 4 4. Effective date of the written agreement between the owner and the undersigned pursuant to which the
- 5 compensation is or will be payable:
- 6 5. Amount of compensation claimed by the undersigned: \$....., or percent of sales price, or specify
- 7 other formula for determination of amount of compensation:
- 8 6. The undersigned, under penalty of perjury, hereby swears or affirms that the undersigned has read
- 9 this lien notice, knows its contents and believes the contents to be true and correct, and is making this claim for
- 10 compensation pursuant to the written agreement described in this lien notice.
- 11 7. The undersigned confirms that this lien notice or a copy of the notice has been delivered to the owner.

12 WARNING TO OWNER: If you dispute the compensation claimed in this lien notice, you must notify the

13 closing agent of the dispute not later than 5 days after the closing. If you fail to notify the closing agent before that

14 date that you dispute the compensation, you will be considered to have confirmed the compensation and Montana

15 law will require the closing agent to pay the compensation from your net proceeds from the disposition of your

16 real property.

17 This lien notice may be recorded in the public records of the county or counties where the real property

18 is located."

19 (3) Subject to subsection (4), if a claimant wishes to enforce a lien for compensation under [sections 3

20 through 11], the claimant shall, at least 5 days before the closing, deliver a copy of the lien notice to the owner

21 of the real property specified in the agreement and the closing agent designated to close the transaction.

22 (4) Except as provided in this subsection, a claimant that fails to deliver a copy of a lien notice as

23 required under subsection (3) within the period specified may not enforce a lien for compensation under [sections

24 3 through 11]. If the claimant fails to deliver a copy of the lien notice within the required period solely because the

25 owner entered into a contract for the disposition of the real property without the knowledge of the claimant, the

26 lien may be enforced if:

27 (a) the copy of the lien notice is delivered to the owner and the closing agent before the closing agent

28 disburses the owner's net proceeds to the owner; and

29 (b) the claimant executes and delivers to the closing agent a sworn affidavit stating that the copy of the

30 lien notice was not delivered within the time period specified in subsection (3) solely because the owner entered



1 into a contract for the disposition of the real property without the knowledge of the claimant.

2

3 **NEW SECTION. Section 6. Recording lien notice -- effectiveness.** (1) (a) After a claimant delivers
4 copies of a lien notice as provided in [section 5], the claimant may record the lien notice in the public records
5 maintained by the clerk in the county or counties in which the real property is located.

6 (b) The lien created by this part against the owner's net proceeds is perfected by recording the lien notice
7 in the public records maintained by the clerk in the county or counties in which the real property is located and
8 takes priority pursuant to [sections 3 through 11] on the date of the recording.

9 (2) A recorded lien notice is effective under [sections 3 through 11] only with respect to dispositions made
10 by the owner named in the lien notice. After the recording of a deed from the owner conveying the real property
11 specified in the lien notice to a bona fide purchaser for value, the lien notice is ineffective with respect to any
12 subsequent dispositions of that real property.

13 (3) A lien notice recorded under [sections 3 through 11] expires 1 year after the date of recording unless
14 the owner remains obligated to pay compensation to the claimant after the expiration date and the claimant
15 records an extension notice in the same public records within 30 days before the expiration date. An extension
16 notice must refer to the recording information of the original lien notice, state that the owner remains obligated
17 to pay compensation to the claimant, and include the information and be executed in the manner required by
18 [section 5] for the original lien notice. A timely recorded extension notice extends the expiration date of the original
19 recorded lien notice by 1 additional year. Successive extension notices may be recorded for so long as the owner
20 remains obligated to pay compensation to the claimant. Within 10 days after recording an extension notice, the
21 claimant shall deliver a copy of the extension notice to the owner.

22 (4) The delivery or recording of a lien notice or the enforcement of a claim for compensation by a
23 claimant under [sections 3 through 11] does not relieve the owner of the owner's obligation to close a transaction
24 involving the disposition of the owner's real property.

25 (5) Whenever a lien notice is recorded and a condition or event occurs or fails to occur that would
26 preclude the claimant from receiving the claimed compensation under the terms of the agreement, including the
27 filing of a lien notice in a manner that does not comply with [sections 3 through 11], the claimant shall, within 7
28 days following demand by the owner, record a written release of the lien notice in the public records of any county
29 where the lien notice was recorded.

30 (6) If a claimant records a lien notice pursuant to this section and the claimed compensation is paid or

1 the lien notice is otherwise discharged or satisfied pursuant to [sections 3 through 11], the claimant shall, within
2 7 days after the compensation is paid or the lien notice is otherwise discharged or satisfied, record a written
3 release of the lien notice in the public records of any county where the lien notice was recorded.

4
5 **NEW SECTION. Section 7. Duties of closing agent -- reservation of owner's net proceeds.** (1) (a)

6 The closing agent shall reserve from the owner's net proceeds an amount equal to the compensation claimed
7 in the lien notice if, before the closing agent disburses the owner's net proceeds from the closing of a disposition
8 of real property, a lien notice pertaining to the real property is delivered to the closing agent in accordance with
9 [section 5].

10 (b) If the owner's net proceeds are insufficient to pay the full amount of the claimed compensation, the
11 closing agent shall reserve the entire amount of the owner's net proceeds.

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

14 (i) whether the owner is a party to any agreement under which a claimant may have a right to claim
15 compensation from the disposition of the real property;

16 (ii) the name, mailing address, and telephone number of any claimant who may have a right to claim
17 compensation, if known to the owner;

18 (iii) the amount of all compensation that may be claimed under an agreement disclosed in the owner's
19 affidavit, to the best of the owner's knowledge and belief; and

20 (iv) whether the owner confirms or disputes the amount of any compensation claimed from the disposition
21 of the real property as disclosed in the owner's affidavit.

22 (b) If the closing agent receives an affidavit from the owner under this subsection (2) disclosing that
23 compensation may be claimed from the disposition of the real property, regardless of whether the owner confirms
24 or disputes the compensation, the closing agent shall reserve from the owner's net proceeds an amount equal
25 to the total compensation amount disclosed by the owner in the affidavit. Upon request by a claimant who has
26 an agreement with the owner covering the real property identified in the owner's affidavit, the closing agent shall
27 deliver a copy of the affidavit to the claimant. If the owner's affidavit discloses an amount of compensation that
28 is different from the compensation amount required to be reserved under subsection (1), the closing agent shall
29 reserve the greater of the two compensation amounts.

30 (3) If the provisions of subsection (1) do not require the closing agent to reserve any of the owner's net

1 proceeds and if the closing agent receives an owner's affidavit pursuant to subsection (2) stating that the owner
2 is not a party to any agreement under which compensation may be claimed from the disposition of the real
3 property, the closing agent does not have a duty under [sections 3 through 11] to reserve money or property from
4 the owner's net proceeds.

5 (4) If the closing agent determines that the owner's net proceeds from a disposition of real property are
6 insufficient to pay the full amount of the compensation claimed in a lien notice or disclosed in an owner's affidavit,
7 the closing agent shall, within 3 days after making that determination but not later than the closing of the
8 disposition, notify the owner and the claimant of the determination. The closing agent's determination that the
9 owner's net proceeds are insufficient does not relieve the owner of the owner's contractual obligations under the
10 agreement to pay the full compensation owing to the claimant.

11 (5) If the owner confirms that compensation is payable to the claimant, at the closing of the disposition
12 of the real property the closing agent shall release to the claimant the confirmed amount of the compensation
13 from the reserved proceeds. A settlement statement executed by the owner and showing the payment of
14 compensation to the claimant is confirmation by the owner of the compensation amount shown on the settlement
15 statement. If the owner disputes the claimant's right to receive all or a portion of the claimed compensation, the
16 closing agent shall release to the claimant from the reserved proceeds only the undisputed portion of the
17 compensation, if any. Until the rights of the owner and the claimant with respect to the disputed reserved
18 proceeds are determined pursuant to [sections 3 through 11] or the owner and the claimant otherwise agree in
19 writing, the closing agent may not release the disputed reserved proceeds to any person other than to deposit
20 the proceeds in the registry of a court having jurisdiction of the dispute.

21 (6) The compensation claimed in the lien notice must be considered confirmed by the owner, and the
22 closing agent shall release the reserved proceeds to the claimant if all of the following conditions have been met:

- 23 (a) 5 days have passed after the closing;
24 (b) the owner has neither confirmed nor disputed the claimed compensation to the closing agent; and
25 (c) the closing agent receives reasonably satisfactory evidence that the claimant delivered a copy of the
26 lien notice to the owner in accordance with [section 5].

27 (7) If the owner's net proceeds consist in whole or in part of a purchase-money note and if the money
28 portion of the owner's net proceeds is insufficient to pay the full amount of the compensation claimed, the lien for
29 the portion of the compensation not paid from the money proceeds attaches to the purchase-money note and any
30 security for the note, and the closing agent shall reserve and release the purchase-money note in accordance

1 with [sections 3 through 11] in the same manner as the money portion of the reserved proceeds. If the owner and
2 the claimant are unable to agree within 5 days after the closing regarding the closing agent's release of the
3 purchase-money note, the closing agent may interplead the purchase-money note along with any money reserved
4 proceeds in accordance with [section 8].

5 (8) If the disposition of the real property is part of a like-kind exchange by the owner that is deferred from
6 federal income tax under section 1031 of the Internal Revenue Code of 1986, as amended, and if all of the
7 owner's net proceeds in excess of the undisputed compensation are to be delivered to a third party in order to
8 qualify the disposition for the tax deferral treatment, the owner may substitute other cash, a surety bond, an
9 unconditional letter of credit, or other liquid security acceptable to the claimant in lieu of any disputed reserved
10 proceeds held by the closing agent under this section or deposited in the court registry in accordance with
11 [section 8].

12 (9) Upon the request of the closing agent or the owner, a claimant who has recorded a lien notice under
13 [section 5] shall submit a satisfaction or release of the lien notice in recordable form to the closing agent to be
14 held in escrow pending the closing and the closing agent's release to the claimant of the portion of the owner's
15 net proceeds reserved by the closing agent under this section. The closing agent is authorized to deduct from
16 the reserved proceeds payable to the claimant the cost of recording the satisfaction or release of the lien notice.

17 (10) The closing agent's requirement for an owner's affidavit pursuant to subsection (2) and the closing
18 agent's reservation of a portion of an owner's net proceeds pursuant to subsection (1) or subsection (2) do not
19 relieve the owner of the owner's obligation to close the transaction for the disposition of the real property,
20 including, without limitation, any obligation of the owner to the buyer under the purchase and sale contract to
21 discharge mortgages, liens, or encumbrances against the real property that were recorded after the lien notice
22 and, therefore, are not subtracted from gross sales proceeds when computing the owner's net proceeds under
23 [section 9].

24 (11) A closing agent is not liable to the owner, the claimant, or any other person in a civil action for any
25 action taken by the closing agent to comply with the provisions of [sections 3 through 11].

26 (12) The provisions of [sections 3 through 11] do not require a closing agent to serve involuntarily more
27 than 30 days after a closing as an escrow agent or stakeholder for money or other property that is disputed by
28 the owner and the claimant under the provisions of [sections 3 through 11].

29

30 NEW SECTION. **Section 8. Interpleader or other proceedings -- deposit of reserved proceeds in**

1 **court registry -- discharge of closing agent from further liability.** (1) The closing agent may, by interpleader
2 action or other legal proceeding, seek adjudication of the rights of the parties with respect to disputed reserved
3 proceeds in a court in a county where all or a portion of the real property is located if, after the closing of a
4 transaction, the following conditions are met:

5 (a) the closing agent has reserved all or a portion of the owner's net proceeds pursuant to [section 7]
6 and the owner disputes the release to the claimant of all or any portion of the reserved proceeds;

7 (b) the owner and the claimant have not agreed in writing, within 30 days after the closing, regarding the
8 closing agent's release of the disputed reserved proceeds; and

9 (c) neither the owner nor the claimant has commenced a civil action to determine the rights of the parties
10 with respect to the disputed reserved proceeds.

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

17 (a) costs, including reasonable attorney fees, incurred by the closing agent to commence an action or
18 proceeding or to appear in an action or proceeding commenced by the owner or the claimant;

19 (b) the costs of recording the affidavit described in subsection (3) if a lien notice has been recorded; and

20 (c) the service charges of the clerk of court for receiving the net amount of the disputed reserved
21 proceeds into the registry of the court.

22 (3) If a lien notice has been recorded in the public records of the county or counties where the real
23 property is located, upon depositing the net disputed reserved proceeds with the clerk of the court pursuant to
24 subsection (2), the closing agent shall execute and record an affidavit referring to the recorded lien notice and
25 stating that the net disputed reserved proceeds have been deposited in accordance with [sections 3 through 11].
26 The recording of the affidavit operates to release the recorded lien notice.

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

30

1 **NEW SECTION. Section 9. Priority of recorded lien notice.** All statutory liens, consensual liens,
2 mortgages, trust indentures, assignments of rents, and other encumbrances, including all advances or charges
3 made or accruing under statutory liens, consensual liens, mortgages, trust indentures, assignments of rents, and
4 other encumbrances, whether voluntary or obligatory, and all modifications, extensions, renewals, and
5 replacements recorded prior to the recording of a lien notice pursuant to the provisions of [section 6] have priority
6 over the lien notice. The closing agent shall compute the owner's net proceeds by subtracting from the gross
7 sales proceeds the amount required to discharge any prior recorded lien and the amount of money secured by
8 any prior recorded lien that the buyer permits to remain a lien against the title to the real property.

9
10 **NEW SECTION. Section 10. Service of notice.** Notices to be delivered to a party pursuant to [sections
11 3 through 11], other than service of process as required in civil actions, must be made by personal service, by
12 certified mail with return receipt requested, or by electronic delivery with evidence of delivery in the form of a
13 receipt or other paper or electronic acknowledgment by the party to whom the notice is delivered. Delivery is
14 effective at the time of personal service or electronic delivery or 3 days following deposit in the mail as required
15 by this section.

16
17 **NEW SECTION. Section 11. Buyer representative.** (1) A written contract between a buyer and a
18 claimant for the payment by the buyer of a fee or other compensation to the claimant for licensed services relating
19 to the sale or disposition of real property to the buyer is not an agreement with the owner under [sections 3
20 through 11], and the claimant is not entitled under [sections 3 through 11] to record a lien notice against the
21 owner's real property, to claim a lien against the owner's real property, or to claim a lien against the owner's net
22 proceeds from the sale or disposition of the owner's real property.

23 (2) If an owner enters into a written contract with a buyer for the sale or disposition of real property that
24 entitles a claimant to receive a fee or other compensation from the buyer under the terms of the claimant's written
25 contract with the buyer, the claimant may give notice of the claimant's right to receive payment to the closing
26 agent, the owner, the buyer, or any other party to the sale, disposition, or financing of the real property if the
27 notice is given without violating any confidentiality provisions contained in either written contract.

28 (3) A notice given by the claimant pursuant to subsection (2) may not be considered as constituting
29 tortious interference with the sale, disposition, or financing of the real property.

30 (4) A claimant who has, pursuant to a written contract with a buyer or prospective buyer, earned

1 compensation that is related to the purchase of real property by the buyer may claim a lien upon any real property
2 purchased by or otherwise conveyed to the buyer by recording a lien notice in the public records maintained by
3 the clerk in the county or counties in which the real property or any interest in the real property is located. For
4 purposes of this subsection (4):

5 (a) the lien notice must be recorded within 365 days after the purchase or other conveyance or transfer
6 to the prospective buyer;

7 (b) the contents of the lien notice must include the information provided in [section 5] and must be in
8 substantially the form provided in [section 5(2)];

9 (c) a copy of the lien notice must be delivered to the buyer within 10 days of recording the notice of lien
10 as provided in this section;

11 (d) the lien may not be assigned voluntarily or by operation of law, may not be enforced by a person
12 other than the claimant, and may not be waived before the compensation is earned;

13 (e) if the claimant is a salesperson, the lien may not be enforced or waived without written authorization
14 from the salesperson's supervising broker;

15 (f) at or before the time a prospective buyer executes an agreement with the claimant, the claimant shall
16 disclose that [sections 3 through 11] create lien rights for compensation earned by a claimant that are not
17 waivable before the compensation is earned, as provided in [section 4(5)];

18 (g) the lien is perfected by the recording of the lien notice and takes priority under [sections 3 through
19 11] on the date of the recording of the lien notice. The priority of the lien notice does not relate back to the date
20 of the agreement.

21 (h) a lien notice recorded by a claimant for a claimed compensation expires 2 years after the date of
22 recording unless within that time the claimant commences an action to foreclose the lien under subsection (6)
23 and records a notice of lis pendens in the public records of the county or counties where the lien notice was
24 recorded;

25 (i) if a claimant records a lien notice pursuant to this section and the claimed compensation is paid or
26 the lien notice is otherwise discharged or satisfied, the claimant shall, within 7 days after the compensation is paid
27 or the lien notice is otherwise discharged or satisfied, record a written release of the lien notice in the public
28 records of any county where the lien notice was recorded.

29 (5) (a) The clerk shall endorse upon every lien notice that is filed as provided in subsection (4) the date
30 of its filing and shall make an abstract of the lien in a book to be kept for that purpose and properly indexed,

1 containing the date of the filing, the name of the person holding the lien, the amount of the lien, the name of the
2 person against whose real property the lien is filed, and the legal description of the real property to be charged
3 with the lien.

4 (b) The clerk may not file the lien unless it is accompanied by a certification by the claimant that filed the
5 lien, or the claimant's agent, that a copy of the lien has been served upon each owner of record of the real
6 property named in the lien notice.

7 (6) A claimant may file an action to foreclose a lien provided for in subsection (4). If the claimant is a
8 salesperson, the salesperson's supervising broker shall authorize, in writing, the filing of the action to foreclose
9 the lien. The foreclosure must be commenced in a district court of a county where the lien notice was recorded.
10 The foreclosure action must be commenced before the lien notice expires or is extinguished.

11 (7) (a) At any time before a claimant has commenced an action to foreclose a lien under subsection (6)
12 or within 30 days of the service of a complaint in an action to foreclose a lien, any person having an interest in
13 the real property upon which the lien is imposed, whether legal or beneficial, may file a bond with the clerk of the
14 district court in the county in which the real property is located or, if the property is located in more than one
15 county, with the clerk of the district court of any county in which a part of the property is located.

16 (b) The bond must be in an amount $1 \frac{1}{2}$ times the amount of the lien as claimed in the lien notice and
17 must be either in cash or written by a corporate surety company. If written by a corporate surety, the bond must
18 be approved by a judge of the district court with which the bond is filed.

19 (c) The bond must be conditioned that if the claimant is finally adjudged to be entitled to recover the
20 compensation claim upon which the lien is based, the principal or the principal's sureties shall pay to the claimant
21 the amount of the judgment, together with any interest, costs, attorney fees, and other sums that the claimant is
22 entitled to recover upon the foreclosure of the lien.

23 (8) Upon the filing of a bond as provided in subsection (7), the lien against the real property must be
24 discharged and released in full and the bond must be substituted for the lien.

25
26 **NEW SECTION. Section 12. Definitions.** As used in [sections 12 through 20], the following definitions
27 apply:

28 (1) "Agreement" means a written contract between an owner of real property and a claimant that
29 obligates the owner to pay compensation to the claimant for licensed services relating to the lease of real
30 property.

1 (2) "Broker" means a real estate broker who has a valid real estate broker's license issued under
2 37-51-301.

3 (3) "Certified appraiser" means a real estate appraiser who has a valid real estate appraisal certificate
4 issued under 37-54-305.

5 (4) "Claimant" means a broker, salesperson, property manager, licensed appraiser, or certified appraiser
6 entitled to claim a lien for compensation as provided in [sections 12 through 20].

7 (5) "Compensation" means a fee or other compensation that an owner agrees to pay to a claimant, as
8 specified in an agreement.

9 (6) "Contingent compensation" means compensation that becomes payable only upon the occurrence
10 of an event or events provided for in an agreement.

11 (7) "Lease" means a written agreement creating a relationship of landlord and tenant with respect to real
12 property under which the tenant acquires from the landlord the right to possess the real property for a specified
13 period of time.

14 (8) "Licensed appraiser" means a real estate appraiser who holds a current valid real estate appraiser
15 license issued under 37-54-201.

16 (9) "Lien notice" means the written notice of lien made by a claimant under [section 14].

17 (10) "Owner" means a person vested with fee simple title or a possessory estate in real property.

18 (11) "Property manager" means a property manager who has met the qualifications for licensure as a
19 property manager as provided in 37-51-601.

20 (12) "Salesperson" means a real estate salesperson who has a valid real estate salesperson's license
21 issued under 37-51-301.

22 (13) "Supervising broker" has the meaning provided in 37-51-102.

23
24 **NEW SECTION. Section 13. Lien for compensation.** (1) A claimant has a lien upon an owner's
25 interest in real property for compensation earned by the claimant pursuant to an agreement. If the owner
26 obligated to pay the compensation is the landlord, the lien attaches to the landlord's interest in the real property
27 identified in the agreement but not to the tenant's leasehold estate. If the owner obligated to pay the
28 compensation is the tenant, the lien attaches to the tenant's leasehold estate but not to the landlord's interest in
29 the real property.

30 (2) For purposes of [sections 12 through 20]:

- 1 (a) compensation is earned on the date or dates set forth in the agreement; and
- 2 (b) contingent compensation is considered earned upon the occurrence of the event or events provided
- 3 for in the agreement.
- 4 (3) A lien for compensation arising under [sections 12 through 20]:
- 5 (a) may not be assigned voluntarily or by operation of law and may not be enforced by a person other
- 6 than the claimant;
- 7 (b) may not be waived before the compensation is earned; and
- 8 (c) if the claimant is a salesperson, may not be enforced or waived without written authorization from the
- 9 salesperson's supervising broker.
- 10 (4) At or before the time the owner executes an agreement, the claimant shall disclose that [sections 12
- 11 through 20] create lien rights for compensation earned by a claimant that are not waivable before the
- 12 compensation is earned. A claimant may not enforce a lien if the disclosure required by this subsection was not
- 13 made. A disclosure in substantially the following form is sufficient: "Montana law provides that when a licensed
- 14 real estate broker, licensed real estate salesperson, licensed property manager, licensed appraiser, or certified
- 15 appraiser has earned compensation by performing licensed services under an agreement with you, they may
- 16 claim a lien against your interest in the property for the compensation owing. These lien rights cannot be waived
- 17 before the compensation is earned."

18

19 **NEW SECTION. Section 14. Contents of lien notice.** (1) A lien notice made by a claimant with respect

20 to compensation claimed under [sections 12 through 20] must be in writing, must be signed and sworn to or

21 affirmed by the claimant under penalty of perjury before a notary public, and must include the following:

- 22 (a) the name of the owner obligated to pay the claimed compensation;
- 23 (b) a statement of whether the owner obligated to pay the compensation is the landlord or the tenant;
- 24 (c) the name of the person or persons owning the fee simple interest in the real property if other than
- 25 the owner obligated to pay the compensation;
- 26 (d) the legal description of the real property;
- 27 (e) the name, mailing address, and telephone number of the claimant;
- 28 (f) the effective date of the agreement;
- 29 (g) the amount of the compensation claimed by the claimant, which may be stated in a dollar amount
- 30 or may be stated in the form of a formula determining the amount, such as a percentage of the rents payable

1 under the lease;

2 (h) a description of the lease sufficient to identify the lease for which the compensation is claimed,
3 including, if then known to the claimant, the names of the landlord and tenant under the lease, the date of the
4 lease, and an identification of the leased premises;

5 (i) a statement of whether the claimant is claiming contingent compensation, the amount of the
6 contingent compensation or the formula for computing the compensation, and a description of the event or events
7 that must occur for the claimant to be entitled to the contingent compensation; and

8 (j) a statement that the claimant has read the lien notice, knows its contents and believes the contents
9 to be true and correct, and makes the claim for compensation pursuant to the agreement described in the lien
10 notice.

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

12 "NOTICE OF LIEN FOR LEASE OF REAL PROPERTY

13 Notice is hereby given that the undersigned is entitled to receive compensation in the amount set forth
14 below from the owner named below pursuant to the terms of a written agreement regarding a lease of the real
15 property described below and that the undersigned claims a lien against the owner's interest in the real property.

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

17 2. The owner obligated to pay the compensation is [check one]:

18 [] the landlord under the lease

19 [] the tenant under the lease

20 3. Name of the person owning the fee simple interest in the real estate if other than the owner who is
21 obligated to pay the compensation:

22 4. Legal description of the real property:

23 5. Name, mailing address, and telephone number of the undersigned:

24 6. Effective date of the written agreement between the owner and the undersigned pursuant to which the
25 compensation is or will be payable:

26 7. Amount of compensation claimed by the undersigned: \$....., or percent of sales price, or specify
27 other formula for determination of amount of compensation:

28 8. The lease for which the compensation is claimed is described as follows [provide all information known
29 to the undersigned]:

30 Name of landlord:

1 Name of tenant:

2 Date of lease:

3 Leased premises:

4 9. Contingent compensation: Is the undersigned claiming compensation that may become payable upon
5 the occurrence of an event or events provided for in an agreement that do not require the undersigned to perform
6 any additional services in order to receive this contingent compensation?

7 Yes

8 No

9 If yes, specify the amount of the contingent compensation or the formula for computing the contingent
10 compensation and provide a description of the event or events that must occur for the undersigned to be entitled
11 to the contingent compensation:

12 10. The expiration date of this lien notice is 2 years after the date of recording unless the answer to
13 paragraph 9 is yes, in which case the expiration date of this lien notice for the contingent compensation in
14 paragraph 9 is 10 years after the date of recording.

15 11. The undersigned, under penalty of perjury, hereby swears or affirms that the undersigned has read
16 this lien notice, knows its contents and believes the contents to be true and correct, and is making this claim for
17 compensation pursuant to the written agreement described in this lien notice."

18

19 **NEW SECTION. Section 15. Recording lien notice -- effectiveness.** (1) (a) After compensation is
20 earned under [sections 12 through 20], the claimant may record a lien notice in the public records maintained by
21 the clerk in the county or counties in which the real property is located. The lien notice must be recorded not later
22 than the earlier of:

23 (i) 90 days after the tenant takes possession of the leased premises; or

24 (ii) the date of the recording in the public records of a deed or assignment by the owner obligated to pay
25 the compensation transferring the owner's interest in the real property to a bona fide purchaser for value.

26 (b) A claimant who fails to record a lien notice within the time period prescribed by this section may not
27 enforce a lien for the claimed compensation under [sections 12 through 20], and a lien notice that is recorded
28 outside of the time period prescribed by this section is void.

29 (2) The claimant's lien is perfected by the recording of the lien notice and takes priority under [sections
30 12 through 20] on the date of the recording of the lien notice. The priority of the lien notice does not relate back

1 to the date of the agreement.

2 (3) If the compensation is to be paid in installments and any installment is due after the lease is
3 executed, the lien notice is valid only to the extent that compensation remains unpaid by the owner to the
4 claimant.

5 (4) A recorded lien notice is effective only with respect to leases made by the owner named in the lien
6 notice.

7 (5) Whenever a lien notice is recorded and a condition or event occurs or fails to occur that would
8 preclude the claimant from receiving the claimed compensation under the terms of the agreement, including the
9 filing of a lien notice in a manner that does not comply with [sections 12 through 20], the claimant shall, within 7
10 days following demand by the owner, record a written release of the lien notice in the public records of the county
11 where the lien notice was recorded.

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

16 (7) (a) Except as provided in subsection (7)(b), a lien notice recorded by a claimant for a claimed
17 compensation expires 2 years after the date of recording unless within that time the claimant commences an
18 action to foreclose the lien under [section 17] and records a notice of lis pendens in the public records of the
19 county where the lien notice was recorded.

20 (b) To the extent that a lien notice recorded by a claimant under [sections 12 through 20] claims
21 contingent compensation that is earned but not yet payable, the lien notice expires 10 years after the date of
22 recording unless within that time the claimant commences an action to foreclose the lien under [section 17] and
23 records a notice of lis pendens in the public records of the county where the lien notice was recorded. If the
24 owner remains obligated to pay compensation to the claimant after 10 years, the claimant may extend the
25 expiration date of a lien notice for contingent compensation by recording an extension notice in the same public
26 records within the last 6 months before the expiration date. An extension notice must refer to the recording
27 information of the original lien notice, state that the owner remains obligated to pay compensation to the claimant,
28 and include the same information and be executed in the same manner as required by [section 14] for the original
29 lien notice. A timely recorded extension notice extends the expiration date of the original recorded lien notice by
30 10 additional years. Successive extension notices may be recorded for as long as the owner remains obligated

1 to pay compensation to the claimant. Within 10 days after recording an extension notice, the claimant shall
2 deliver a copy to the owner.

3 (8) A copy of the lien notice must be delivered to the owner specified in the agreement within 10 days
4 of recording the notice of lien as provided in this section.

5
6 **NEW SECTION. Section 16. Filing with county clerk -- notification to owner.** The clerk shall
7 endorse upon every lien notice that is filed as provided in [sections 12 through 20] the date of its filing and shall
8 make an abstract of the lien in a book to be kept for that purpose and properly indexed, containing the date of
9 the filing, the name of the person holding the lien, the amount of the lien, the name of the person against whose
10 real property the lien is filed, and the description of the real property to be charged with the lien.

11
12 **NEW SECTION. Section 17. Foreclosure of lien.** A claimant may file an action to foreclose a lien
13 provided for in [sections 12 through 20]. If the claimant is a salesperson, the salesperson's supervising broker
14 shall authorize, in writing, the filing of the action to foreclose the lien. The foreclosure must be commenced in a
15 district court of the county where the lien notice was recorded. The foreclosure action must be commenced before
16 the lien notice expires or is extinguished.

17
18 **NEW SECTION. Section 18. Substitution of bond allowed -- filing -- amount -- condition.** (1) At any
19 time before a claimant has commenced an action to foreclose a lien under [sections 12 through 20] or within 30
20 days of the service of a complaint in an action to foreclose a lien, any person having an interest in the real
21 property upon which the lien is imposed, whether legal or beneficial, may file a bond with the clerk of the district
22 court in the county in which the real property is located or, if the property is located in more than one county, with
23 the clerk of the district court of any county in which a part of the property is located.

24 (2) The bond must be in an amount 1 1/2 times the amount of the lien as claimed in the lien notice and
25 must be either in cash or written by a corporate surety company. If written by a corporate surety, the bond must
26 be approved by a judge of the district court with which the bond is filed.

27 (3) The bond must be conditioned that if the claimant is finally adjudged to be entitled to recover the
28 compensation claim upon which the lien is based, the principal or the principal's sureties shall pay to the claimant
29 the amount of the judgment, together with any interest, costs, attorney fees, and other sums that the claimant is
30 entitled to recover upon the foreclosure of the lien.

1

2 **NEW SECTION. Section 19. Lien discharged upon filing of bond.** Upon the filing of a bond as
3 provided in [section 18], the lien against the real property must be discharged and released in full and the bond
4 must be substituted for the lien.

5

6 **NEW SECTION. Section 20. Service of notice.** Notices to be delivered to a party pursuant to [sections
7 12 through 20], other than service of process as required in civil actions, must be made by personal service, by
8 certified mail with return receipt requested, or by electronic delivery with evidence of delivery in the form of a
9 receipt or other paper or electronic acknowledgment by the party to whom the notice is delivered. Delivery is
10 effective at the time of personal service or electronic delivery or 3 days following deposit in the mail as required
11 by this section.

12

13 **NEW SECTION. Section 21. Codification instruction.** [Sections 3 through 20] are intended to be
14 codified as an integral part of Title 71, chapter 3, and the provisions of Title 71, chapter 3, apply to [sections 3
15 through 20].

16

17 **NEW SECTION. Section 22. Effective date.** [This act] is effective on passage and approval.

18

- END -