

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 365

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

AN ACT

RELATING TO COMMERCIAL REAL ESTATE; CREATING THE COMMERCIAL  
REAL ESTATE BROKER LIEN ACT; REQUIRING NOTICE; LIMITING TIME TO  
FILE SUIT TO ENFORCE LIEN; PROVIDING FOR ALTERNATIVE DISPUTE  
RESOLUTION; PROVIDING FOR AWARD OF ATTORNEY FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1. SHORT TITLE.**--This act may be cited as the  
"Commercial Real Estate Broker Lien Act".

**SECTION 2. DEFINITIONS.**--As used in the Commercial Real  
Estate Broker Lien Act:

A. "broker" means a person licensed as a qualifying  
broker under the provisions of Chapter 61, Article 29 NMSA  
1978; and

B. "commercial real estate" means any real estate  
other than:

.194090.2

underscoring material = new  
~~[bracketed material] = delete~~

1                   (1) real estate on which no buildings or  
2 structures are located and that is zoned for single-family  
3 residential use; or

4                   (2) real estate containing one or more  
5 single-family residential units, including apartments,  
6 condominiums, town houses or homes in a subdivision when sold,  
7 leased or otherwise conveyed on a unit-by-unit basis.

8           **SECTION 3. BROKER'S LIEN FOR COMPENSATION FOR SERVICES--**  
9 **REQUIREMENTS.--**A broker shall have a lien upon commercial real  
10 estate or any interest in commercial real estate in the amount  
11 that the broker is due for licensed services connected with the  
12 leasing of the commercial real estate, if the broker:

13                   A. is entitled to a stated fee or commission  
14 provided in a written instrument that:

15                               (1) identifies the commercial real estate;  
16                               (2) sets forth the fee or commission due and  
17 the date or circumstances under which the fee or commission is  
18 due; and

19                               (3) is signed by the owner of the commercial  
20 real estate or the owner's authorized agent; and

21                   B. records a notice of lien on the commercial real  
22 estate pursuant to Section 4 of the Commercial Real Estate  
23 Broker Lien Act. Such lien shall only be valid against the  
24 commercial real estate identified in the written instrument  
25 described in Subsection A of this section and in the amount due

1 for the fee or commission stated therein.

2 SECTION 4. NOTICE OF LIEN--ATTACHMENT REQUIREMENTS--  
3 RECORDING--CONTENTS--MAILING.--

4 A. A broker shall record a notice of lien within  
5 ninety days following the date on which payment is due as set  
6 forth in a written instrument as required by Section 3 of the  
7 Commercial Real Estate Broker Lien Act. If compensation is to  
8 be paid in installments, a broker may elect to file a single  
9 claim of lien within ninety days following the date the first  
10 installment is due for all installments due under the written  
11 instrument or to file a lien for future installments within  
12 ninety days following the date the future installments are due.  
13 In the event a broker is due additional commission as a result  
14 of future actions related to a lease, including the exercise of  
15 an option to expand leased commercial real estate or to renew  
16 or extend a lease, the broker shall record a notice of lien no  
17 earlier than the occurrence of the act or event for which the  
18 broker's additional commission is earned and not later than  
19 ninety days after the occurrence of the act or event for which  
20 the broker's additional commission is earned.

21 B. If the commercial real estate is sold or  
22 otherwise conveyed and the broker has filed a valid notice of  
23 lien prior to the sale or other conveyance, the purchaser or  
24 transferee shall be deemed to have notice of and shall take  
25 title to the commercial real estate subject to the notice of

.194090.2

1 lien.

2 C. A lien shall attach as of the date of the  
3 recording of the notice of lien pursuant to Subsection A of  
4 this section.

5 D. Nothing in the Commercial Real Estate Broker  
6 Lien Act shall limit or otherwise affect claims, defenses or  
7 other remedies that a broker, owner or any other party may have  
8 in law or equity.

9 E. A notice of lien shall be recorded in the county  
10 clerk's office of the county in which the commercial real  
11 estate is located and shall include:

12 (1) the name, address and license number of  
13 the broker;

14 (2) the amount for which the lien is claimed;

15 (3) a legal description of the commercial real  
16 estate or a description sufficient to identify the commercial  
17 real estate; and

18 (4) the name and last known address of the  
19 owner of the commercial real estate.

20 F. Within ten days of recording the notice of lien,  
21 the broker shall mail a copy of the notice of lien by certified  
22 mail, return receipt requested, to the last known address of  
23 the owner of the commercial real estate or the owner's  
24 authorized agent.

25 SECTION 5. COMMENCEMENT OF ACTION--DEMAND FOR SUIT TO

.194090.2

## 1 ENFORCE LIEN--RECORDING SATISFACTION OF LIEN.--

2 A. A broker claiming a lien under the Commercial  
3 Real Estate Broker Lien Act shall, within two years after  
4 recording the notice of lien, bring suit to enforce the lien in  
5 the district court in the county where the commercial real  
6 estate is located. Failure to commence proceedings pursuant to  
7 this subsection shall extinguish the lien.

8 B. An owner of the commercial real estate or the  
9 owner's authorized agent may serve written demand, by certified  
10 mail, return receipt requested, or by personal service, on the  
11 broker claiming the lien requiring the broker to file suit to  
12 enforce the lien. The broker shall file suit in the district  
13 court in the county where the commercial real estate is located  
14 within thirty days of receipt of the written demand. Failure  
15 to file suit upon written demand pursuant to this subsection  
16 shall extinguish the lien.

17 C. If a broker's lien has been recorded pursuant to  
18 Section 4 of the Commercial Real Estate Broker Lien Act and the  
19 indebtedness has been paid in full or the lien has been  
20 extinguished or is otherwise not enforceable pursuant to law,  
21 within ten days after the indebtedness has been paid in full,  
22 the lien has been extinguished or becomes unenforceable  
23 pursuant to law, the broker shall:

24 (1) record a written release or satisfaction  
25 of the lien in the county clerk's office of the county in which

.194090.2

1 the commercial real estate is located; and

2 (2) mail a copy of the recorded release or  
3 satisfaction by certified mail, return receipt requested, to  
4 the last known address of the owner of the commercial real  
5 estate or the owner's authorized agent.

6 SECTION 6. ESCROW OF DISPUTED AMOUNTS.--A lien filed with  
7 the county clerk's office against commercial real estate shall  
8 be automatically extinguished and shall immediately become a  
9 lien on the funds held in an established escrow account under  
10 the following conditions:

11 A. the owner of the commercial real estate against  
12 which the lien has been filed or the owner's authorized agent  
13 establishes an escrow account with an escrow company licensed  
14 under Chapter 58, Article 22 NMSA 1978 or a title insurance  
15 company licensed under Chapter 59A, Article 30 NMSA 1978 in an  
16 amount computed as one hundred twenty-five percent of the  
17 amount of the claim for lien; and

18 B. a representative of the escrow or title company  
19 files an affidavit with the county clerk's office identifying  
20 the commercial real estate against which the lien has been  
21 filed and certifying that an escrow account has been  
22 established by the owner of the commercial real estate or the  
23 owner's authorized agent in accordance with this section.

24 SECTION 7. ALTERNATIVE DISPUTE RESOLUTION.--If the broker  
25 and the party or parties from whom the commission is claimed

.194090.2

1 agree in writing to alternative dispute resolution, the claim  
2 shall be addressed in a forum upon which the parties have  
3 agreed. If a lien foreclosure proceeding is initiated, the  
4 court before which a lien foreclosure proceeding is brought  
5 shall retain jurisdiction over all parties to the foreclosure  
6 to enter judgment on an award or other result made or reached  
7 in alternative dispute resolution. During the pendency of the  
8 alternative dispute resolution process, the notice of lien  
9 shall remain of record and the foreclosure proceeding shall be  
10 stayed.

11 **SECTION 8. ATTORNEY FEES.**--The cost of proceedings,  
12 including trial and appellate court proceedings and alternative  
13 dispute resolution, brought pursuant to the Commercial Real  
14 Estate Broker Lien Act, including reasonable attorney fees,  
15 expenses of litigation and prejudgment interest, shall be  
16 awarded to the prevailing party or parties. When more than one  
17 party is responsible for costs, fees and prejudgment interest,  
18 the costs, fees and prejudgment interest shall be equitably  
19 apportioned by the court or tribunal among those responsible  
20 parties.

21 **SECTION 9. PRIORITY OF LIEN.**--Prior valid recorded liens,  
22 mortgages, other prior and valid recorded encumbrances, and  
23 liens that have priority pursuant to law, shall have priority  
24 over a broker's lien.

25 **SECTION 10. EFFECTIVE DATE.**--The effective date of the  
.194090.2

underscored material = new  
~~[bracketed material] = delete~~

1 provisions of this act is July 1, 2013.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

underscoring = new  
~~bracketed material~~ = delete