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HOUSE BILL 185

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

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

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

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

SECTION 2. [NEW MATERIAL] 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:

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

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

16 (1) identifies the commercial real estate;

17 (2) sets forth the fee or commission due and  
18 the date or dates or the circumstances under which the fee or  
19 commission is due; and

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

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

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1 described in Subsection A of this section and in the amount due  
2 for the fee or commission stated therein.

3 SECTION 4. [NEW MATERIAL] NOTICE OF LIEN--ATTACHMENT  
4 REQUIREMENTS--RECORDING--CONTENTS--MAILING.--

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

22 B. A lien shall attach as of the date of the  
23 recording of the notice of lien pursuant to Subsection A of  
24 this section.

25 C. Nothing in the Commercial Real Estate Broker

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1 Lien Act shall limit or otherwise affect claims, defenses or  
2 other remedies that a broker, owner or any other party may have  
3 in law or equity.

4 D. A notice of lien shall be recorded in the county  
5 clerk's office of the county in which the commercial real  
6 estate is located and shall include:

7 (1) the name, address and license number of  
8 the broker;

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

10 (3) a legal description of the commercial real  
11 estate or a description sufficient to identify the commercial  
12 real estate; and

13 (4) the name and last known address of the  
14 owner of the commercial real estate.

15 E. Within ten days of recording the notice of lien,  
16 the broker shall mail a copy of the notice of lien by certified  
17 mail, return receipt requested, to the last known address of  
18 the owner of the commercial real estate or the owner's  
19 authorized agent.

20 SECTION 5. [NEW MATERIAL] COMMENCEMENT OF ACTION--  
21 RECORDING SATISFACTION OF LIEN.--

22 A. A broker claiming a lien under the Commercial  
23 Real Estate Broker Lien Act shall, within two years after  
24 recording the notice of lien, bring suit to enforce the lien in  
25 the district court in the county where the commercial real

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1 estate is located. Failure to commence proceedings pursuant to  
2 this subsection shall extinguish the lien.

3 B. If a broker's lien has been recorded pursuant to  
4 Section 4 of the Commercial Real Estate Broker Lien Act and the  
5 indebtedness has been paid in full or the lien has been  
6 extinguished or is otherwise not enforceable pursuant to law,  
7 within ten days after the indebtedness has been paid in full,  
8 the lien has been extinguished or becomes unenforceable  
9 pursuant to law, the broker shall:

10 (1) record a written release or satisfaction  
11 of the lien in the county clerk's office of the county in which  
12 the commercial real estate is located; and

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

17 SECTION 6. [NEW MATERIAL] PETITION TO CANCEL LIEN--  
18 SECURITY.--

19 A. The owner of any commercial real estate upon  
20 which a lien has been filed pursuant to the Commercial Real  
21 Estate Broker Lien Act may petition the district court for the  
22 county in which the commercial real estate is located for an  
23 order canceling the lien.

24 B. Upon the filing of the petition, the district  
25 court judge shall examine the broker's recorded demands and

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1 determine an amount sufficient to satisfy the recorded demands  
2 and any other damages, court costs or attorney fees that may be  
3 recovered by the broker. Security, in the amount set by the  
4 judge and of a type approved by the judge, shall be deposited  
5 by the owner of the commercial real estate with the district  
6 court conditioned on the payment of any sum found to be validly  
7 due to the broker.

8 C. When the security is deposited under this  
9 section, the judge of the district court shall immediately  
10 issue an order canceling the lien and shall notify the county  
11 clerk with whom the lien was filed. Upon the recording of the  
12 order, the county clerk shall mark the filed lien as canceled.  
13 When an order is issued under this subsection, the broker's  
14 lien attaches to the security and is enforceable as to the  
15 security in the district court in which it is deposited.

16 SECTION 7. [NEW MATERIAL] ATTORNEY FEES.--The cost of  
17 proceedings, including trial and appellate court proceedings,  
18 brought pursuant to the Commercial Real Estate Broker Lien Act,  
19 including reasonable attorney fees, expenses of litigation and  
20 prejudgment interest, shall be awarded to the prevailing party  
21 or parties. When more than one party is responsible for costs,  
22 fees and prejudgment interest, the costs, fees and prejudgment  
23 interest shall be equitably apportioned by the court or  
24 tribunal among those responsible parties.

25 SECTION 8. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2014.

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