

HOUSE BILL 365

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

INTRODUCED BY

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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:

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- 1                   (1) real estate containing one to four
- 2 residential units;
- 3                   (2) real estate on which no buildings or
- 4 structures are located and that is zoned for single-family
- 5 residential use; or
- 6                   (3) single-family residential units such as
- 7 apartments, condominiums, town houses or homes in a subdivision
- 8 when sold, leased or otherwise conveyed on a unit-by-unit
- 9 basis, even though these units may be a part of a larger
- 10 building or parcel of real estate containing more than four
- 11 residential units.

12                   SECTION 3. BROKER'S LIEN FOR COMPENSATION FOR SERVICES--

13 REQUIREMENTS.--A broker shall have a lien upon commercial real

14 estate or any interest in commercial real estate in the amount

15 that the broker is due for licensed services connected with the

16 leasing of the commercial real estate, which may include

17 brokerage fees and consulting fees if the broker:

- 18                   A. is entitled to a stated fee or commission
- 19 provided in a written instrument that:
- 20                   (1) identifies the commercial real estate;
- 21                   (2) sets forth the fee or commission due and
- 22 the date or circumstances under which the fee or commission is
- 23 due; and
- 24                   (3) is signed by the owner of the commercial
- 25 real estate or the owner's authorized agent; and

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1           B. records a notice of lien on the commercial real  
2 estate pursuant to Section 4 of the Commercial Real Estate  
3 Broker Lien Act. Such lien shall only be valid against the  
4 commercial real estate identified in the written instrument  
5 described in Subsection A of this section and in the amount due  
6 for the fee or commission stated therein.

7           **SECTION 4. NOTICE OF LIEN--ATTACHMENT REQUIREMENTS--**  
8 **RECORDING--CONTENTS--MAILING.--**

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

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1           B. If the commercial real estate is sold or  
2 otherwise conveyed and the broker has filed a valid notice of  
3 lien prior to the sale or other conveyance, the purchaser or  
4 transferee shall be deemed to have notice of and shall take  
5 title to the commercial real estate subject to the notice of  
6 lien.

7           C. A lien shall attach as of the date of the  
8 recording of the notice of lien pursuant to Subsection A of  
9 this section.

10           D. Nothing in the Commercial Real Estate Broker  
11 Lien Act shall limit or otherwise affect claims, defenses or  
12 other remedies that a broker, owner or any other party may have  
13 in law or equity.

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

17                   (1) the name, address and license number of  
18 the broker;

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

20                   (3) a legal description of the commercial real  
21 estate or a description sufficient to identify the commercial  
22 real estate; and

23                   (4) the name and last known address of the  
24 owner of the commercial real estate.

25           F. Within ten days of recording the notice of lien,

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1 the broker shall mail a copy of the notice of lien by certified  
2 mail, return receipt requested, to the last known address of  
3 the owner of the commercial real estate or the owner's  
4 authorized agent.

5 SECTION 5. COMMENCEMENT OF ACTION--DEMAND FOR SUIT TO  
6 ENFORCE LIEN--RECORDING SATISFACTION OF LIEN.--

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

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

22 C. If a broker's lien has been recorded pursuant to  
23 Section 4 of the Commercial Real Estate Broker Lien Act and the  
24 indebtedness has been paid in full or the lien has been  
25 extinguished or is otherwise not enforceable pursuant to law,

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1 within ten days after the indebtedness has been paid in full,  
2 the lien has been extinguished or becomes unenforceable  
3 pursuant to law, the broker shall:

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

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

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

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

23 B. a representative of the escrow or title company  
24 files an affidavit with the county clerk's office identifying  
25 the commercial real estate against which the lien has been

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1 filed and certifying that an escrow account has been  
2 established by the owner of the commercial real estate or the  
3 owner's authorized agent in accordance with this section.

4 SECTION 7. ALTERNATIVE DISPUTE RESOLUTION.--If the broker  
5 and the party or parties from whom the commission is claimed  
6 agree in writing to alternative dispute resolution, the claim  
7 shall be addressed in a forum upon which the parties have  
8 agreed. If a lien foreclosure proceeding is initiated, the  
9 court before which a lien foreclosure proceeding is brought  
10 shall retain jurisdiction over all parties to the foreclosure  
11 to enter judgment on an award or other result made or reached  
12 in alternative dispute resolution. During the pendency of the  
13 alternative dispute resolution process, the notice of lien  
14 shall remain of record and the foreclosure proceeding shall be  
15 stayed.

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

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SECTION 9. PRIORITY OF LIEN.--Prior valid recorded liens, mortgages and other encumbrances shall have priority over a broker's lien.

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013.