

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. 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:

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

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

SECTION 3. BROKER'S LIEN FOR COMPENSATION FOR SERVICES--REQUIREMENTS.--A broker shall have a lien upon

commercial real estate or any interest in commercial real estate in the amount that the broker is due for licensed services connected with the leasing of the commercial real estate, if the broker:

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

(1) identifies the commercial real estate;

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

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

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

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

A. A broker shall record a notice of lien within ninety days following the date on which payment is due as set forth in a written instrument as required by Section 3 of the Commercial Real Estate Broker Lien Act. If compensation is to be paid in installments, a broker may elect to file a single

claim of lien within ninety days following the date the first installment is due for all installments due under the written instrument or to file a lien for future installments within ninety days following the date the future installments are due. In the event a broker is due additional commission as a result of future actions related to a lease, including the exercise of an option to expand leased commercial real estate or to renew or extend a lease, the broker shall record a notice of lien no earlier than the occurrence of the act or event for which the broker's additional commission is earned and not later than ninety days after the occurrence of the act or event for which the broker's additional commission is earned.

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

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

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

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

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

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

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

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

SECTION 5. COMMENCEMENT OF ACTION--RECORDING SATISFACTION OF LIEN.--

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

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

the lien has been extinguished or becomes unenforceable pursuant to law, the broker shall:

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

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

SECTION 6. PETITION TO CANCEL LIEN--SECURITY.--

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

B. Upon the filing of the petition, the district court judge shall examine the broker's recorded demands and determine an amount sufficient to satisfy the recorded demands and any other damages, court costs or attorney fees that may be recovered by the broker. Security, in the amount set by the judge and of a type approved by the judge, shall be deposited by the owner of the commercial real estate with the district court conditioned on the payment of any sum found to be validly due to the broker.

C. When the security is deposited under this

