

## Commercial broker liens used to recoup leasing commission

Passed by the Colorado Legislature in 2010, the Commercial Real Estate Brokers Commission Securities Act – C.R.S. § 38-22.5-101 – 111 (the “act”) gives commercial real estate brokers the ability to place a lien on commercial real estate when the property owner fails to pay a leasing commission properly due. Under the act, a broker can lien commercial real estate in the amount of the compensation agreed to between the broker and owner in connection with leasing or attempting to lease commercial real estate. The agreement must be set forth in a written listing agreement, written compensation agreement or other written agreement. The commercial real estate must have been listed with the broker, and the broker must have provided “licensed services that resulted in the procuring of a person or entity” who leased some interest in the commercial property. Under Colorado common law, whether a broker is a “procuring cause” rests on whether the broker set in motion a chain of events that, without a break in continuity, resulted in a sale. *Telluride Real Estate Company v. Penthouse Affiliates, LLC*, 996 P.2d 151 (Colo. App., 1999). Under the act, a broker may lien commercial property if the broker either procures a person or entity who leases the property, or the broker has otherwise earned a fee or commission in accordance with the broker’s agreement with the owner.

A broker’s first step in the



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by registered or certified mail, return receipt requested, and addressed to the owner’s last-known address. The notice of intent (which also serves as a notice of lien) must state the broker’s name and license number, the owner’s name, a legal description of the property upon which the lien is being claimed and the amount for which the lien is claimed. The broker must sign the notice of intent, and attest that the information contained in the notice is true and accurate to his or her knowledge and belief. Notice of lien must be filed with the clerk and recorder of the county where the commercial real estate is located no sooner than 30 days after serving the owner with the notice of intent, but not more than 90 days after the tenant takes possession of the leased property, or 90 days after the compensation is due under agreement, whichever is later. Additionally, commercial real estate is not subject to a broker lien to enforce payment of a “renewal

lien process is to serve the property owner with a notice of intent to record a notice of lien (“notice of intent”). The notice of intent must be personally served on the owner, or delivered to the owner

commission” if the property is conveyed to a bona fide purchaser before the recording of a notice of lien. A renewal commission is defined in the act as “an additional compensation that may become payable to a real estate broker if a lease is later renewed or modified to expand the leased premises or extend the lease term.”

Although it does not appear to be a prerequisite to serving a notice of intent, before recording a notice of lien, a broker must first make a good faith effort to resolve the nonpayment issue through mediation. That process, which is nonbinding unless otherwise agreed in writing, commences when a written notice requesting mediation is delivered by one party to the other at the party’s last-known address. Thereafter, the obligation to mediate automatically terminates after 30 days if the entire dispute is not resolved. Once notice of lien is recorded, legal action to foreclose the lien must be commenced within six months. A notice (typically referred to as a *lis pendens*) stating that legal action has been commenced must also be filed with the clerk and recorder within that same six-month time period. A commercial broker lien is not entitled to any special priority, but remains subject to any prior-recorded encumbrance on the property. A broker’s right to such a lien cannot be waived, absent consideration acceptable to both the broker and the owner.▲