

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 10-0843.01 Duane Gall

HOUSE BILL 10-1288

HOUSE SPONSORSHIP

**Nikkel**, Rice, Ferrandino, Kerr J., Lambert, Liston, McNulty, Merrifield, Peniston, Priola, Scanlan, Waller

SENATE SPONSORSHIP

**Williams**, Kopp, Penry, Tochtrop

House Committees  
Judiciary

Senate Committees  
Judiciary

A BILL FOR AN ACT

101 CONCERNING THE ABILITY OF A COMMERCIAL REAL ESTATE BROKER  
102 TO SECURE PAYMENT OF COMMISSIONS EARNED, AND, IN  
103 CONNECTION THEREWITH, ENACTING THE "COMMERCIAL REAL  
104 ESTATE BROKERS COMMISSION SECURITY ACT".

Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

Existing law allows architects, building contractors, auto mechanics, and others to enforce debts through creation of a lien on real

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

SENATE  
Am ended 2nd Reading  
March 19, 2010

HOUSE  
3rd Reading Unamended  
March 9, 2010

HOUSE  
Am ended 2nd Reading  
March 8, 2010

or personal property. The bill extends this enforcement mechanism to real estate brokers who procure tenants for commercial real estate, either under a listing agreement or a written compensation agreement.

The bill places conditions on the real estate broker's right to the lien, including an obligation to seek mediation of the dispute; to give notice of the intent to pursue enforcement of the debt through the lien process, both before and after recording the notice of lien; and to commence a lawsuit within 6 months if the debt is not paid.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1.** Title 38, Colorado Revised Statutes, is amended BY  
3 THE ADDITION OF A NEW ARTICLE to read:

4   **ARTICLE 22.5**

5   **Commercial Real Estate Brokers**

6   **Commission Security Act**

7           **38-22.5-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND  
8 MAY BE CITED AS THE "COMMERCIAL REAL ESTATE BROKERS  
9 COMMISSION SECURITY ACT".

10           **38-22.5-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE  
11 CONTEXT OTHERWISE REQUIRES:

12           (1) "AGREEMENT" MEANS A WRITTEN LISTING AGREEMENT,  
13 WRITTEN COMPENSATION AGREEMENT, OR OTHER WRITTEN AGREEMENT  
14 BETWEEN A REAL ESTATE BROKER AND AN OWNER THAT GRANTS THE REAL  
15 ESTATE BROKER A RIGHT TO COMPENSATION FOR PROFESSIONAL SERVICES  
16 IN CONNECTION WITH LEASING OR ATTEMPTING TO LEASE COMMERCIAL  
17 REAL ESTATE.

18           (2) "COMMERCIAL REAL ESTATE" MEANS ANY REAL PROPERTY  
19 OTHER THAN REAL PROPERTY CONTAINING ONE TO FOUR RESIDENTIAL  
20 UNITS. "COMMERCIAL REAL ESTATE" DOES NOT INCLUDE SINGLE-FAMILY  
21 OR MULTI-FAMILY RESIDENTIAL UNITS INCLUDING CONDOMINIUMS,

1 TOWNHOUSES, OR HOMES IN A SUBDIVISION WHEN SUCH REAL ESTATE IS  
2 SOLD, LEASED, OR OTHERWISE CONVEYED ON A UNIT-BY-UNIT BASIS EVEN  
3 THOUGH THE UNITS MAY BE PART OF A LARGER BUILDING OR PARCEL OF  
4 REAL PROPERTY CONTAINING MORE THAN FOUR RESIDENTIAL UNITS.

5 (3) "OWNER" MEANS THE OWNER OF RECORD OF REAL ESTATE AND  
6 INCLUDES AN AGENT OF SUCH OWNER.

7 (4) "REAL ESTATE BROKER" HAS THE MEANING SET FORTH IN  
8 SECTION 12-61-101, C.R.S.

9 (5) "RENEWAL COMMISSION" MEANS AN ADDITIONAL COMMISSION  
10 THAT MAY BECOME PAYABLE TO A REAL ESTATE BROKER IF A LEASE IS  
11 LATER RENEWED OR MODIFIED TO EXPAND THE LEASED PREMISES OR  
12 EXTEND THE LEASE TERM.

13 **38-22.5-103. Brokers' lien for compensation for services -**  
14 **requirements.** (1) A REAL ESTATE BROKER SHALL HAVE A LIEN ON  
15 COMMERCIAL REAL ESTATE, IN THE AMOUNT OF THE COMPENSATION AS  
16 SET FORTH IN THE AGREEMENT, IF:

17 (a) SUCH REAL ESTATE IS LISTED WITH THE REAL ESTATE BROKER  
18 UNDER TERMS OF AN AGREEMENT OR IS THE SUBJECT OF AN AGREEMENT;  
19 AND

20 (b) THE REAL ESTATE BROKER HAS PROVIDED LICENSED SERVICES  
21 THAT RESULTED IN THE PROCURING OF A PERSON OR ENTITY WHO HAS  
22 LEASED ANY INTEREST IN THE COMMERCIAL REAL ESTATE IN ACCORDANCE  
23 WITH THE AGREEMENT.

24 (2) THE LIEN CREATED BY THIS SECTION MAY BE WAIVED BY  
25 MEANS OF A WRITTEN WAIVER, SIGNED BY THE REAL ESTATE BROKER, AT  
26 ANY TIME AFTER THE REAL ESTATE BROKER HAS EARNED THE RIGHT TO  
27 COMPENSATION IN ACCORDANCE WITH THE LISTING AGREEMENT OR

1     COMPENSATION AGREEMENT.

2

3           (3) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION,  
4     COMMERCIAL REAL ESTATE IS NOT SUBJECT TO A REAL ESTATE BROKERS'  
5     LIEN TO ENFORCE THE PAYMENT OF A RENEWAL COMMISSION IF THE  
6     PROPERTY IS CONVEYED TO A BONA FIDE PURCHASER BEFORE THE  
7     RECORDING OF A NOTICE OF LIEN PURSUANT TO SECTION 38-22.5-104.

8           **38-22.5-104. Notice of intent - lien notice - service - contents -**

9     **filng.** (1) THE REAL ESTATE BROKER SHALL SERVE A NOTICE OF INTENT  
10    TO RECORD A NOTICE OF LIEN UPON THE OWNER AT LEAST THIRTY DAYS  
11    BEFORE RECORDING THE NOTICE OF LIEN WITH THE COUNTY CLERK AND  
12    RECORDER OF THE COUNTY IN WHICH THE COMMERCIAL REAL ESTATE IS  
13    LOCATED. SUCH NOTICE OF INTENT SHALL BE SERVED BY PERSONAL  
14    SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT  
15    REQUESTED, ADDRESSED TO THE LAST-KNOWN ADDRESS OF THE OWNER OR  
16    THE OWNER'S AGENT, AT LEAST THIRTY DAYS BEFORE RECORDING OF THE  
17    NOTICE OF LIEN WITH THE COUNTY CLERK AND RECORDER. IF THE NOTICE  
18    OF INTENT IS SERVED UPON THE OWNER'S AGENT, A COPY OF THE NOTICE  
19    SHALL ALSO BE SERVED UPON THE OWNER OF RECORD BY PERSONAL  
20    SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT  
21    REQUESTED, ADDRESSED TO THE OWNER'S LAST-KNOWN ADDRESS, AT  
22    LEAST THIRTY DAYS BEFORE RECORDING OF THE NOTICE OF LIEN WITH THE  
23    COUNTY CLERK AND RECORDER.

24           (2) THE NOTICE OF LIEN SHALL STATE THE NAME OF THE REAL  
25    ESTATE BROKER, THE NAME OF THE OWNER, A LEGAL DESCRIPTION OF THE  
26    PROPERTY UPON WHICH THE LIEN IS BEING CLAIMED, THE AMOUNT FOR  
27    WHICH THE LIEN IS CLAIMED, AND THE REAL ESTATE LICENSE NUMBER OF

1 THE REAL ESTATE BROKER. THE REAL ESTATE BROKER SHALL SIGN THE  
2 NOTICE OF LIEN, AND ATTEST THAT THE INFORMATION CONTAINED IN THE  
3 NOTICE IS TRUE AND ACCURATE AS TO HIS OR HER KNOWLEDGE AND  
4 BELIEF.

5 **38-22.5-105. Mediation period.** THE REAL ESTATE BROKER  
6 SHALL MAKE A GOOD FAITH EFFORT TO ATTEMPT TO RESOLVE THE  
7 NONPAYMENT OF THE COMMISSION THROUGH MEDIATION. THE  
8 MEDIATOR'S RECOMMENDED RESOLUTION IS NOT BINDING UNLESS THE  
9 PARTIES SO AGREE IN WRITING. THE PARTIES SHALL JOINTLY APPOINT AN  
10 ACCEPTABLE MEDIATOR AND SHALL SHARE EQUALLY IN THE COST OF THE  
11 MEDIATION. MEDIATION SHALL COMMENCE WHEN A WRITTEN NOTICE  
12 REQUESTING MEDIATION IS DELIVERED BY ONE PARTY TO THE OTHER AT  
13 THE PARTY'S LAST-KNOWN ADDRESS, AND, UNLESS OTHERWISE AGREED,  
14 THE MEDIATION SHALL TERMINATE IF THE ENTIRE DISPUTE IS NOT  
15 RESOLVED WITHIN THIRTY DAYS THEREAFTER. THIS SECTION DOES NOT  
16 IMPAIR THE ABILITY OF A REAL ESTATE BROKER TO RECORD A NOTICE OF  
17 LIEN IF A RESOLUTION IS NOT AGREED UPON BY BOTH PARTIES.

18 **38-22.5-106. When lien attaches - effect of payment by**  
19 **installments - affirmative defense.** (1) THE LIEN CREATED BY SECTION  
20 38-22.5-103 ATTACHES TO AN INTEREST IN COMMERCIAL REAL ESTATE  
21 WHEN ALL OF THE FOLLOWING CONDITIONS ARE MET:

22 (a) THE REAL ESTATE BROKER EITHER:

23 (I) PROCURES A PERSON OR ENTITY WHO LEASES THE PROPERTY IN  
24 ACCORDANCE WITH THE AGREEMENT; OR

25 (II) HAS OTHERWISE EARNED A FEE OR COMMISSION IN  
26 ACCORDANCE WITH THE AGREEMENT;

27 (b) THE REAL ESTATE BROKER SERVES A NOTICE OF INTENT TO

1 RECORD A NOTICE OF LIEN UPON THE OWNER OR OWNER'S AGENT AS  
2 PROVIDED IN SECTION 38-22.5-104;

3 (c) THE REAL ESTATE BROKER MAKES A GOOD FAITH ATTEMPT TO  
4 OBTAIN SETTLEMENT THROUGH MEDIATION AS PROVIDED IN SECTION  
5 38-22.5-105; AND

6 (d) AT LEAST THIRTY DAYS AFTER SERVING THE OWNER WITH  
7 NOTICE OF INTENT TO RECORD A NOTICE OF LIEN, BUT NOT MORE THAN  
8 NINETY DAYS AFTER THE TENANT TAKES POSSESSION OF THE LEASED  
9 PROPERTY OR NINETY DAYS AFTER THE COMPENSATION IS DUE UNDER THE  
10 COMPENSATION AGREEMENT, WHICHEVER IS LATER, THE REAL ESTATE  
11 BROKER RECORDS A NOTICE OF THE LIEN IN THE OFFICE OF THE CLERK AND  
12 RECORDER OF THE COUNTY IN WHICH THE COMMERCIAL REAL ESTATE IS  
13 LOCATED.

14 (2) NOTWITHSTANDING PARAGRAPH (d) OF SUBSECTION (1) OF THIS  
15 SECTION:

16 (a) IF PAYMENT IS DUE IN INSTALLMENTS AND A PORTION OF THE  
17 PAYMENT IS DUE AFTER THE LEASING OF ANY INTEREST IN COMMERCIAL  
18 REAL ESTATE, A CLAIM FOR A LIEN FOR ONLY THAT PORTION MAY BE  
19 RECORDED WITHIN NINETY DAYS AFTER THE TENANT TAKES POSSESSION  
20 OF THE LEASED PROPERTY OR NINETY DAYS AFTER THE COMPENSATION IS  
21 DUE UNDER THE \_\_\_ AGREEMENT, WHICHEVER IS LATER; AND

22 (b) THE LIEN SHALL BE EFFECTIVE AS A LIEN AGAINST THE  
23 COMMERCIAL REAL ESTATE ONLY TO THE EXTENT MONEYS ARE STILL  
24 OWED TO THE REAL ESTATE BROKER BY THE OWNER. ANY CLAIMS FOR A  
25 LIEN FOR FUTURE INSTALLMENT PAYMENTS SHALL ONLY BE RECORDED  
26 WITHIN NINETY DAYS AFTER THOSE INSTALLMENT PAYMENTS BECOME DUE  
27 IN ACCORDANCE WITH THE \_\_\_ AGREEMENT.

1 (3) THE LIEN ATTACHES FOR PURPOSES OF THIS SECTION WHEN THE  
2 CLAIM FOR LIEN IS RECORDED, AND SHALL NOT RELATE BACK TO THE DATE  
3 OF THE   AGREEMENT.

4 (4) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE  
5 CONTRARY, IT SHALL BE AN AFFIRMATIVE DEFENSE IN AN ACTION TO  
6 FORECLOSE A LIEN PURSUANT TO THIS ARTICLE THAT THE OWNER HAS PAID  
7 TO THE LISTING BROKER AN AMOUNT SUFFICIENT TO SATISFY THE  
8 CONTRACTUAL AND LEGAL OBLIGATIONS OF THE OWNER, INCLUDING  
9 COMPENSATION TO THE TENANT'S BROKER.

10 **38-22.5-107. Conditions on validity of lien - subsequent service**  
11 **of notice to owner - action commenced within six months.** (1) NO  
12 LIEN CLAIMED BY VIRTUE OF THIS ARTICLE SHALL HOLD THE PROPERTY  
13 LONGER THAN TEN DAYS AFTER THE RECORDING OF THE NOTICE OF LIEN  
14 UNDER SECTION 38-22.5-104 UNLESS THE REAL ESTATE BROKER PROVIDES  
15 A COPY OF THE NOTICE OF LIEN TO THE OWNER OR OWNER'S AGENT BY  
16 PERSONAL SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN  
17 RECEIPT REQUESTED, ADDRESSED TO THE LAST-KNOWN ADDRESS OF SUCH  
18 PERSON, WITHIN TEN DAYS AFTER RECORDING THE NOTICE OF LIEN.

19 (2) NO LIEN CLAIMED BY VIRTUE OF THIS ARTICLE SHALL HOLD THE  
20 PROPERTY LONGER THAN SIX MONTHS AFTER THE RECORDING OF THE  
21 NOTICE OF LIEN UNDER SECTION 38-22.5-104 UNLESS AN ACTION TO  
22 FORECLOSE THE LIEN HAS BEEN COMMENCED WITHIN THAT TIME, AND  
23 UNLESS ALSO A NOTICE STATING THAT SUCH ACTION HAS BEEN  
24 COMMENCED IS FILED FOR RECORD WITHIN THAT TIME IN THE OFFICE OF  
25 THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH THE  
26 PROPERTY IS SITUATED. WHERE TWO OR MORE LIENS UNDER THIS ARTICLE  
27 ARE CLAIMED OF RECORD AGAINST THE SAME PROPERTY, THE

1 COMMENCEMENT OF ANY ACTION AND THE FILING OF THE NOTICE OF THE  
2 COMMENCEMENT OF SUCH ACTION WITHIN THAT TIME BY ANY ONE OR  
3 MORE OF SUCH LIEN CLAIMANTS IN WHICH ACTION ALL THE LIEN  
4 CLAIMANTS AS APPEAR OF RECORD ARE MADE PARTIES, EITHER PLAINTIFF  
5 OR DEFENDANT, SHALL BE SUFFICIENT.

6 **38-22.5-108. Priority of liens.** THE PRIORITY OF A LIEN CREATED  
7 UNDER THIS ARTICLE IN RELATION TO OTHER INTERESTS IN THE SUBJECT  
8 PROPERTY SHALL BE DETERMINED IN ACCORDANCE WITH SECTION  
9 38-35-109.

10 **38-22.5-109. Satisfaction or release of brokers' lien - written**  
11 **demand by owner - obligation to record.** IF A REAL ESTATE BROKERS'  
12 LIEN HAS BEEN RECORDED PURSUANT TO SECTION 38-22.5-106 AND THE  
13 INDEBTEDNESS HAS BEEN PAID IN FULL OR THE LIEN IS NOT VALID AND  
14 ENFORCEABLE IN ACCORDANCE WITH THIS ARTICLE AND OTHER  
15 APPLICABLE LAW, THE REAL ESTATE BROKER SHALL ACKNOWLEDGE  
16 SATISFACTION OR RELEASE OF SUCH LIEN IN WRITING WITHIN TEN DAYS  
17 AFTER RECEIVING WRITTEN DEMAND FROM THE OWNER AND SHALL  
18 RECORD A WRITTEN RELEASE OR SATISFACTION OF THE LIEN IN THE OFFICE  
19 OF THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE PROPERTY IS  
20 LOCATED.

21 **38-22.5-110. Spurious liens.** SECTION 38-35-204 APPLIES TO  
22 LIENS ASSERTED PURSUANT TO THIS ARTICLE.

23 **38-22.5-111. Substitution of bond allowed - lien to be**  
24 **discharged.** (1) WHENEVER A BROKERS' LIEN HAS BEEN RECORDED IN  
25 ACCORDANCE WITH THIS ARTICLE, THE OWNER OF ANY INTEREST IN THE  
26 PROPERTY SUBJECT TO THE LIEN MAY, AT ANY TIME, FILE WITH THE CLERK  
27 OF THE DISTRICT COURT OF THE COUNTY WHEREIN THE PROPERTY IS



1 SITUATED A CORPORATE SURETY BOND OR SIMILAR FINANCIAL  
2 ASSURANCE. SUCH BOND OR ASSURANCE SHALL BE IN AN AMOUNT EQUAL  
3 TO ONE AND ONE-HALF TIMES THE AMOUNT OF THE LIEN PLUS COSTS  
4 ALLOWED TO DATE AND IS SUBJECT TO APPROVAL BY A JUDGE OF THE  
5 DISTRICT COURT WITH WHICH SUCH BOND OR ASSURANCE IS FILED.

6 (2) THE BOND OR ASSURANCE SHALL BE CONDITIONED THAT, IF THE  
7 LIEN CLAIMANT IS FINALLY ADJUDGED TO BE ENTITLED TO RECOVER ON  
8 THE CLAIM UPON WHICH THE LIEN IS BASED, THE PRINCIPAL OR SURETY  
9 SHALL PAY TO SUCH CLAIMANT THE AMOUNT OF THE JUDGMENT,  
10 INCLUDING ANY INTEREST, COSTS, OR OTHER SUMS TO WHICH THE  
11 CLAIMANT WOULD BE ENTITLED UPON FORECLOSURE OF THE LIEN.

12 (3) UPON THE FILING OF A BOND OR UNDERTAKING AS PROVIDED  
13 IN THIS SECTION, THE LIEN AGAINST THE PROPERTY SHALL BE  
14 IMMEDIATELY DISCHARGED AND RELEASED IN FULL, AND THE REAL  
15 PROPERTY DESCRIBED IN SUCH BOND OR UNDERTAKING SHALL BE  
16 RELEASED FROM THE LIEN AND FROM ANY ACTION BROUGHT TO  
17 FORECLOSE THE LIEN, AND THE BOND OR UNDERTAKING SHALL BE  
18 SUBSTITUTED. THE CLERK OF THE DISTRICT COURT WITH WHICH THE BOND  
19 OR UNDERTAKING HAS BEEN FILED SHALL ISSUE A CERTIFICATE OF  
20 RELEASE, WHICH SHALL BE RECORDED IN THE OFFICE OF THE CLERK AND  
21 RECORDER OF THE COUNTY IN WHICH THE ORIGINAL REAL ESTATE  
22 BROKERS' LIEN WAS FILED, AND THE CERTIFICATE OF RELEASE SHALL SHOW  
23 THAT THE PROPERTY HAS BEEN RELEASED FROM THE LIEN AND FROM ANY  
24 ACTION BROUGHT TO FORECLOSE THE LIEN.

25 **SECTION 2. Act subject to petition - effective date -**  
26 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
27 following the expiration of the ninety-day period after final adjournment

1 of the general assembly (August 11, 2010, if adjournment sine die is on  
2 May 12, 2010); except that, if a referendum petition is filed pursuant to  
3 section 1 (3) of article V of the state constitution against this act or an  
4 item, section, or part of this act within such period, then the act, item,  
5 section, or part shall not take effect unless approved by the people at the  
6 general election to be held in November 2010 and shall take effect on the  
7 date of the official declaration of the vote thereon by the governor.

8 (2) The provisions of this act shall apply to cases in which an  
9 agreement, as defined in section 38-22.5-102, Colorado Revised Statutes,  
10 is entered into on or after the applicable effective date of this act.