

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

**CORRECTED 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



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 AGREEMENT.

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

**38-22.5-104. Notice of intent - lien notice - service - contents - filing.** (1) THE REAL ESTATE BROKER SHALL SERVE A NOTICE OF INTENT TO RECORD A NOTICE OF LIEN UPON THE OWNER AT LEAST THIRTY DAYS BEFORE RECORDING THE NOTICE OF LIEN WITH THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH THE COMMERCIAL REAL ESTATE IS LOCATED. SUCH NOTICE OF INTENT SHALL BE SERVED BY PERSONAL SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE LAST-KNOWN ADDRESS OF THE OWNER OR THE OWNER'S AGENT, AT LEAST THIRTY DAYS BEFORE RECORDING OF THE NOTICE OF LIEN WITH THE COUNTY CLERK AND RECORDER. IF THE NOTICE OF INTENT IS SERVED UPON THE OWNER'S AGENT, A COPY OF THE NOTICE SHALL ALSO BE SERVED UPON THE OWNER OF RECORD BY PERSONAL SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE OWNER'S LAST-KNOWN ADDRESS, AT LEAST THIRTY DAYS BEFORE RECORDING OF THE NOTICE OF LIEN WITH THE COUNTY CLERK AND RECORDER.

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

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

4 **38-22.5-105. Mediation period.** THE REAL ESTATE BROKER  
5 SHALL MAKE A GOOD FAITH EFFORT TO ATTEMPT TO RESOLVE THE  
6 NONPAYMENT OF THE COMMISSION THROUGH MEDIATION. THE  
7 MEDIATOR'S RECOMMENDED RESOLUTION IS NOT BINDING UNLESS THE  
8 PARTIES SO AGREE IN WRITING. THE PARTIES SHALL JOINTLY APPOINT AN  
9 ACCEPTABLE MEDIATOR AND SHALL SHARE EQUALLY IN THE COST OF THE  
10 MEDIATION. MEDIATION SHALL COMMENCE WHEN A WRITTEN NOTICE  
11 REQUESTING MEDIATION IS DELIVERED BY ONE PARTY TO THE OTHER AT  
12 THE PARTY'S LAST-KNOWN ADDRESS, AND, UNLESS OTHERWISE AGREED,  
13 THE MEDIATION SHALL TERMINATE IF THE ENTIRE DISPUTE IS NOT  
14 RESOLVED WITHIN THIRTY DAYS THEREAFTER. THIS SECTION DOES NOT  
15 IMPAIR THE ABILITY OF A REAL ESTATE BROKER TO RECORD A NOTICE OF  
16 LIEN IF A RESOLUTION IS NOT AGREED UPON BY BOTH PARTIES.

17 **38-22.5-106. When lien attaches - effect of payment by**  
18 **installments - affirmative defense.** (1) THE LIEN CREATED BY SECTION  
19 38-22.5-103 ATTACHES TO AN INTEREST IN COMMERCIAL REAL ESTATE  
20 WHEN ALL OF THE FOLLOWING CONDITIONS ARE MET:

21 (a) THE REAL ESTATE BROKER EITHER:

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

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

26 (b) THE REAL ESTATE BROKER SERVES A NOTICE OF INTENT TO  
27 RECORD A NOTICE OF LIEN UPON THE OWNER OR OWNER'S AGENT AS

1 PROVIDED IN SECTION 38-22.5-104;

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

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

12 (2) NOTWITHSTANDING PARAGRAPH (d) OF SUBSECTION (1) OF THIS  
13 SECTION:

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

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

26 (3) THE LIEN ATTACHES FOR PURPOSES OF THIS SECTION WHEN THE  
27 CLAIM FOR LIEN IS RECORDED, AND SHALL NOT RELATE BACK TO THE DATE

1 OF THE      AGREEMENT.

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

8 **38-22.5-107. Conditions on validity of lien - subsequent service**  
9 **of notice to owner - action commenced within six months.** (1) NO  
10 LIEN CLAIMED BY VIRTUE OF THIS ARTICLE SHALL HOLD THE PROPERTY  
11 LONGER THAN TEN DAYS AFTER THE RECORDING OF THE NOTICE OF LIEN  
12 UNDER SECTION 38-22.5-104 UNLESS THE REAL ESTATE BROKER PROVIDES  
13 A COPY OF THE NOTICE OF LIEN TO THE OWNER OR OWNER'S AGENT BY  
14 PERSONAL SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN  
15 RECEIPT REQUESTED, ADDRESSED TO THE LAST-KNOWN ADDRESS OF SUCH  
16 PERSON, WITHIN TEN DAYS AFTER RECORDING THE NOTICE OF LIEN.

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

1 MORE OF SUCH LIEN CLAIMANTS IN WHICH ACTION ALL THE LIEN  
2 CLAIMANTS AS APPEAR OF RECORD ARE MADE PARTIES, EITHER PLAINTIFF  
3 OR DEFENDANT, SHALL BE SUFFICIENT.

4 **38-22.5-108. Priority of liens.** THE PRIORITY OF A LIEN CREATED  
5 UNDER THIS ARTICLE IN RELATION TO OTHER INTERESTS IN THE SUBJECT  
6 PROPERTY SHALL BE DETERMINED IN ACCORDANCE WITH SECTION  
7 38-35-109.

8 **38-22.5-109. Satisfaction or release of brokers' lien - written**  
9 **demand by owner - obligation to record.** IF A REAL ESTATE BROKERS'  
10 LIEN HAS BEEN RECORDED PURSUANT TO SECTION 38-22.5-106 AND THE  
11 INDEBTEDNESS HAS BEEN PAID IN FULL OR THE LIEN IS NOT VALID AND  
12 ENFORCEABLE IN ACCORDANCE WITH THIS ARTICLE AND OTHER  
13 APPLICABLE LAW, THE REAL ESTATE BROKER SHALL ACKNOWLEDGE  
14 SATISFACTION OR RELEASE OF SUCH LIEN IN WRITING WITHIN TEN DAYS  
15 AFTER RECEIVING WRITTEN DEMAND FROM THE OWNER AND SHALL  
16 RECORD A WRITTEN RELEASE OR SATISFACTION OF THE LIEN IN THE OFFICE  
17 OF THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE PROPERTY IS  
18 LOCATED.

19 **38-22.5-110. Spurious liens.** SECTION 38-35-204 APPLIES TO  
20 LIENS ASSERTED PURSUANT TO THIS ARTICLE.

21 **38-22.5-111. Substitution of bond allowed - lien to be**  
22 **discharged.** (1) WHENEVER A BROKERS' LIEN HAS BEEN RECORDED IN  
23 ACCORDANCE WITH THIS ARTICLE, THE OWNER OF ANY INTEREST IN THE  
24 PROPERTY SUBJECT TO THE LIEN MAY, AT ANY TIME, FILE WITH THE CLERK  
25 OF THE DISTRICT COURT OF THE COUNTY WHEREIN THE PROPERTY IS  
26 SITUATED A CORPORATE SURETY BOND OR SIMILAR FINANCIAL  
27 ASSURANCE. SUCH BOND OR ASSURANCE SHALL BE IN AN AMOUNT EQUAL



1 TO ONE AND ONE-HALF TIMES THE AMOUNT OF THE LIEN PLUS COSTS  
2 ALLOWED TO DATE AND IS SUBJECT TO APPROVAL BY A JUDGE OF THE  
3 DISTRICT COURT WITH WHICH SUCH BOND OR ASSURANCE IS FILED.

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

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

23 **SECTION 2. Act subject to petition - effective date -**  
24 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
25 following the expiration of the ninety-day period after final adjournment  
26 of the general assembly (August 11, 2010, if adjournment sine die is on  
27 May 12, 2010); except that, if a referendum petition is filed pursuant to

1 section 1 (3) of article V of the state constitution against this act or an  
2 item, section, or part of this act within such period, then the act, item,  
3 section, or part shall not take effect unless approved by the people at the  
4 general election to be held in November 2010 and shall take effect on the  
5 date of the official declaration of the vote thereon by the governor.

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