

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

**REREVISED**

*This Version Includes All Amendments  
Adopted 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

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**House Committees**  
Judiciary

**Senate Committees**  
Judiciary

SENATE  
Am ended 3rd Reading  
March 25, 2010

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**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".**

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SENATE  
Am ended 2nd Reading  
March 19, 2010

**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>.)*

HOUSE  
3rd Reading Unamended  
March 9, 2010

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

HOUSE  
Am ended 2nd Reading  
March 8, 2010

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.*



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 GENERAL ASSEMBLY INTENDS THAT NOTHING IN THIS  
25 SECTION IS SUBJECT TO A PROSPECTIVE WAIVER BY EITHER PARTY  
26 WITHOUT CONSIDERATION ACCEPTABLE TO THE PARTIES TO THE WAIVER.

27

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

6           **38-22.5-104. Notice of intent - lien notice - service - contents -**  
7 **filing.** (1) THE REAL ESTATE BROKER SHALL SERVE A NOTICE OF INTENT  
8 TO RECORD A NOTICE OF LIEN UPON THE OWNER AT LEAST THIRTY DAYS  
9 BEFORE RECORDING THE NOTICE OF LIEN WITH THE COUNTY CLERK AND  
10 RECORDER OF THE COUNTY IN WHICH THE COMMERCIAL REAL ESTATE IS  
11 LOCATED. SUCH NOTICE OF INTENT SHALL BE SERVED BY PERSONAL  
12 SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT  
13 REQUESTED, ADDRESSED TO THE LAST-KNOWN ADDRESS OF THE OWNER OR  
14 THE OWNER'S AGENT, AT LEAST THIRTY DAYS BEFORE RECORDING OF THE  
15 NOTICE OF LIEN WITH THE COUNTY CLERK AND RECORDER. IF THE NOTICE  
16 OF INTENT IS SERVED UPON THE OWNER'S AGENT, A COPY OF THE NOTICE  
17 SHALL ALSO BE SERVED UPON THE OWNER OF RECORD BY PERSONAL  
18 SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT  
19 REQUESTED, ADDRESSED TO THE OWNER'S LAST-KNOWN ADDRESS, AT  
20 LEAST THIRTY DAYS BEFORE RECORDING OF THE NOTICE OF LIEN WITH THE  
21 COUNTY CLERK AND RECORDER.

22           (2) THE NOTICE OF LIEN SHALL STATE THE NAME OF THE REAL  
23 ESTATE BROKER, THE NAME OF THE OWNER, A LEGAL DESCRIPTION OF THE  
24 PROPERTY UPON WHICH THE LIEN IS BEING CLAIMED, THE AMOUNT FOR  
25 WHICH THE LIEN IS CLAIMED, AND THE REAL ESTATE LICENSE NUMBER OF  
26 THE REAL ESTATE BROKER. THE REAL ESTATE BROKER SHALL SIGN THE  
27 NOTICE OF LIEN, AND ATTEST THAT THE INFORMATION CONTAINED IN THE

1 NOTICE IS TRUE AND ACCURATE AS TO HIS OR HER KNOWLEDGE AND  
2 BELIEF.

3 **38-22.5-105. Mediation period.** THE REAL ESTATE BROKER  
4 SHALL MAKE A GOOD FAITH EFFORT TO ATTEMPT TO RESOLVE THE  
5 NONPAYMENT OF THE COMMISSION THROUGH MEDIATION. THE  
6 MEDIATOR'S RECOMMENDED RESOLUTION IS NOT BINDING UNLESS THE  
7 PARTIES SO AGREE IN WRITING. THE PARTIES SHALL JOINTLY APPOINT AN  
8 ACCEPTABLE MEDIATOR AND SHALL SHARE EQUALLY IN THE COST OF THE  
9 MEDIATION. MEDIATION SHALL COMMENCE WHEN A WRITTEN NOTICE  
10 REQUESTING MEDIATION IS DELIVERED BY ONE PARTY TO THE OTHER AT  
11 THE PARTY'S LAST-KNOWN ADDRESS, AND, UNLESS OTHERWISE AGREED,  
12 THE MEDIATION SHALL TERMINATE IF THE ENTIRE DISPUTE IS NOT  
13 RESOLVED WITHIN THIRTY DAYS THEREAFTER. THIS SECTION DOES NOT  
14 IMPAIR THE ABILITY OF A REAL ESTATE BROKER TO RECORD A NOTICE OF  
15 LIEN IF A RESOLUTION IS NOT AGREED UPON BY BOTH PARTIES.

16 **38-22.5-106. When lien attaches - effect of payment by**  
17 **installments - affirmative defense.** (1) THE LIEN CREATED BY SECTION  
18 38-22.5-103 ATTACHES TO AN INTEREST IN COMMERCIAL REAL ESTATE  
19 WHEN ALL OF THE FOLLOWING CONDITIONS ARE MET:

20 (a) THE REAL ESTATE BROKER EITHER:

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

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

25 (b) THE REAL ESTATE BROKER SERVES A NOTICE OF INTENT TO  
26 RECORD A NOTICE OF LIEN UPON THE OWNER OR OWNER'S AGENT AS  
27 PROVIDED IN SECTION 38-22.5-104;

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

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

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

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

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

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

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

7           **38-22.5-107. Conditions on validity of lien - subsequent service**  
8           **of notice to owner - action commenced within six months.** (1) NO  
9           LIEN CLAIMED BY VIRTUE OF THIS ARTICLE SHALL HOLD THE PROPERTY  
10          LONGER THAN TEN DAYS AFTER THE RECORDING OF THE NOTICE OF LIEN  
11          UNDER SECTION 38-22.5-104 UNLESS THE REAL ESTATE BROKER PROVIDES  
12          A COPY OF THE NOTICE OF LIEN TO THE OWNER OR OWNER'S AGENT BY  
13          PERSONAL SERVICE OR BY REGISTERED OR CERTIFIED MAIL, RETURN  
14          RECEIPT REQUESTED, ADDRESSED TO THE LAST-KNOWN ADDRESS OF SUCH  
15          PERSON, WITHIN TEN DAYS AFTER RECORDING THE NOTICE OF LIEN.

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

1 CLAIMANTS AS APPEAR OF RECORD ARE MADE PARTIES, EITHER PLAINTIFF  
2 OR DEFENDANT, SHALL BE SUFFICIENT.

3 **38-22.5-108. Priority of liens. THE PRIORITY OF A LIEN CREATED**  
4 **UNDER THIS ARTICLE IN RELATION TO OTHER INTERESTS IN THE SUBJECT**  
5 **PROPERTY SHALL BE DETERMINED IN ACCORDANCE WITH SECTION**  
6 **38-35-109.**

7 **38-22.5-109. Satisfaction or release of brokers' lien - written**  
8 **demand by owner - obligation to record.** IF A REAL ESTATE BROKERS'  
9 LIEN HAS BEEN RECORDED PURSUANT TO SECTION 38-22.5-106 AND THE  
10 INDEBTEDNESS HAS BEEN PAID IN FULL OR THE LIEN IS NOT VALID AND  
11 ENFORCEABLE IN ACCORDANCE WITH THIS ARTICLE AND OTHER  
12 APPLICABLE LAW, THE REAL ESTATE BROKER SHALL ACKNOWLEDGE  
13 SATISFACTION OR RELEASE OF SUCH LIEN IN WRITING WITHIN TEN DAYS  
14 AFTER RECEIVING WRITTEN DEMAND FROM THE OWNER AND SHALL  
15 RECORD A WRITTEN RELEASE OR SATISFACTION OF THE LIEN IN THE OFFICE  
16 OF THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE PROPERTY IS  
17 LOCATED.

18 **38-22.5-110. Spurious liens.** SECTION 38-35-204 APPLIES TO  
19 LIENS ASSERTED PURSUANT TO THIS ARTICLE.

20 **38-22.5-111. Substitution of bond allowed - lien to be**  
21 **discharged.** (1) WHENEVER A BROKERS' LIEN HAS BEEN RECORDED IN  
22 ACCORDANCE WITH THIS ARTICLE, THE OWNER OF ANY INTEREST IN THE  
23 PROPERTY SUBJECT TO THE LIEN MAY, AT ANY TIME, FILE WITH THE CLERK  
24 OF THE DISTRICT COURT OF THE COUNTY WHEREIN THE PROPERTY IS  
25 SITUATED A CORPORATE SURETY BOND OR SIMILAR FINANCIAL  
26 ASSURANCE. SUCH BOND OR ASSURANCE SHALL BE IN AN AMOUNT EQUAL  
27 TO ONE AND ONE-HALF TIMES THE AMOUNT OF THE LIEN PLUS COSTS



1 ALLOWED TO DATE AND IS SUBJECT TO APPROVAL BY A JUDGE OF THE  
2 DISTRICT COURT WITH WHICH SUCH BOND OR ASSURANCE IS FILED.

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

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

22 **SECTION 2. Act subject to petition - effective date -**  
23 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
24 following the expiration of the ninety-day period after final adjournment  
25 of the general assembly (August 11, 2010, if adjournment sine die is on  
26 May 12, 2010); except that, if a referendum petition is filed pursuant to  
27 section 1 (3) of article V of the state constitution against this act or an

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

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