

**BROKER-S AND APPRAISER-S  
LIEN ON COMMERCIAL REAL ESTATE ACT**

**CHAPTER 62 OF TEXAS PROPERTY CODE**

**EFFECTIVE  
AUGUST 30, 1999**

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**BROKER-S AND APPRAISER-S  
LIEN ON COMMERCIAL REAL ESTATE ACT**

**NAME OF ACT**

Chapter 62 has been added to the Texas Property Code and will be known as the Brokers and Appraisers Lien on Commercial Real Estate Act (AAct@).

**EFFECTIVE DATE OF ACT**

The Act was effective as of August 30, 1999 and applies to written "commission agreements" to compensate a licensed real estate broker or appraiser entered into on or after August 30, 1999. This means that such Act will not apply to any written agreements relating to brokers or real estate appraisers dated prior to August 30, 1999.

**ONLY TO COMMERCIAL REAL ESTATE**

The Act applies only to land that is "commercial real estate" at the date that a Notice of Lien is filed pursuant to the Act. The Act does not apply to a written agreement in connection with a commercial parcel of real estate if the commission is (i) \$2,500.00 or less in the aggregate or (ii) \$5,000.00 or less if the commercial real estate is:

1. the principal place of business of the record title owner;
  2. is occupied by more than one and fewer than five tenants; and
  3. contains a building or buildings with total gross building area of 7,500 sq. ft. or less
- [Section 62.002 of the Act].**

**DEFINITIONS**

**BROKER/REAL ESTATE APPRAISER**

A Broker (**ABroker@**) is defined by the Act as a licensed real estate broker under the Real Estate License Act (Article 6573a, Vernon-s Texas Civil Statutes) and who is not acting as a residential rental locator as defined by Section 24 of the Real Estate License Act, or is a licensed or certified real estate appraiser under the Texas Appraiser License and Certification Act (Article 6573a.2, Vernon-s Texas Civil Statutes) **[Section 62.003 of the Act]**.

**COMMERCIAL REAL ESTATE**

Commercial real estate is defined by the Act as all real estate except the following:

1. real estate improved with one to four residential units
2. a single family residential unit (including townhouse, condominium or home in a subdivision) if the unit is so leased or conveyed on a unit-by-unit basis;
3. real estate that includes a person-s homestead;
4. real estate not improved with a structure that is zoned for single family residential use or that is restricted for single family use under restrictions that will remain in effect for at least the next two years; and
5. real estate that is and will be used primarily for farming and ranching and that is located more than three miles from a municipality-s boundaries **[Section 62.003 (No. 2) of the Act]**.

**COMMISSION AGREEMENT**

Commission agreement is defined by the Act as a written instrument that:

1. entitles a Broker to a commission;
2. is signed by the person obligated to pay the commission or that person-s authorized agent;
3. references the commission amount or describes the formula used to determine the commission amount; and

4. contains a legally sufficient description of the real estate that is the subject of the agreement if the person obligated to pay the commission is a Seller or lessor [**Section 62.003 (No. 4.)**].

It is the writer's opinion that the Commission Agreement can be contained within the terms of another document (e.g. the Earnest Money Contract) and is not required to be an independent instrument.

### **PAYABLE COMMISSION AND EARNED COMMISSION**

#### **Payable -**

The Act defines when a commission is payable and when the same is earned and states that a commission is payable at the time provided in the Commission Agreement and that if the Commission is conditioned on the occurrence of an event and that event does not occur, the person obligated to pay the commission is not required to pay the commission.

#### **Earned-**

Pursuant to the Act a commission is earned on the earlier of the following dates:

1. The date on which an event occurs that under the Commission Agreement defines when a commission is earned or

2. The date on which the person obligated to pay the commission enters into a purchase contract or a lease during the time period when the Commission Agreement is in effect for all or part of the commercial real estate if the purchase contract or lease is covered by the Commission Agreement and if the parties to the purchase contract or lease are contemplated by the Commission Agreement. With regard to future commissions under a lease agreement pursuant to a Commission Agreement the Act provides that the Broker may receive an additional commission when all of the additional services

relating to the Lease Modification or Renewal expressly prescribed by the Commission Agreement are fulfilled or when the Broker first earned a commission under the Commission Agreement if the Commission Agreement does not expressly require the Broker to perform additional services relating to a lease modification or renewal. [**Section 62.004 of the Act**].

### **PERSON ENTITLED TO LIEN**

The Act provides that a Broker has a lien on the interest of the Seller, Buyer, Lessor or Lessee for commission if the Broker has earned the commission and a notice of lien is recorded and indexed. The lien is available only to the Broker named in the Commission Agreement and is not available to an employee or independent contractor of the Broker.

The Broker's right to claim a lien must be disclosed in the Commission Agreement [**Section 62.021 of the Act**]. The following is a suggested provision to be added to your standard Commission Agreement to comply with Section 62.021 of the Act:

#### **"BROKER'S RIGHT TO CLAIM A LIEN:**

Seller [*Owner, Landlord, Tenant, Sublessor, Subtenant, as appropriate*] recognizes, acknowledges and is hereby notified that Broker is entitled to file and claim a lien upon the Property on or after the date that the Broker's Fee is earned pursuant to the provisions of Chapter 62 of the Texas Property Code entitled "**Brokers and Appraisers' Lien on Commercial Real Estate Act**" and pursuant to the terms and conditions of this Listing [*Agreement, Contract, as appropriate*]."

**WAIVER RELEASE OR DISCHARGE OF LIENS**

The Act provides that a waiver of the Broker's right to a lien or release given before the commission is satisfied or forgiven is void. The Act further provides that a lien is automatically waived if the commission relates to a lease transaction and the Commission Agreement is included in the lease. [Section 62.022 of the Act].

It is the opinion of the writer that the Commission Agreement can be incorporated into a lease by the following reference:

"This Lease incorporates within its terms that certain Commission Agreement by and between \_\_\_\_\_ ("Owner") [Landlord, Sublessor, etc] and \_\_\_\_\_ ("Broker") dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_."

**AFFIDAVIT IDENTIFYING BROKER**

The Act provides that the Buyer, Buyer's authorized agent, or an escrow agent may require a Seller of commercial real estate and the Broker representing the Seller to provide the requesting party before closing a written affidavit identifying each broker with whom the affiant believes the Seller or Seller's agent has signed a Commission Agreement under which a commission has been earned but not been paid. [Section 62.023 of the Act].

**FILING OR NOTICE OF LIEN**

The Act requires that the Broker file the Notice of Lien with the county clerk in the county in which the commercial real estate is located [Section 62.024].

**CONTENTS OF NOTICE OF LIEN** (See Attachment A)

The Act further requires that the Notice of Lien be signed by the Broker or a person authorized to sign on behalf of the Broker. The Notice must contain the following:

1. A sworn statement of the nature and amount of the claim including the commission amount or formula, the type of commission including a deferred commission and the month and year in which the commission was earned;
2. the name of the broker and the real estate license number of the broker;
3. the name reflected on the broker's records, who the broker believes is obligated to pay the commission;
4. the name reflected in the broker's records of any person the broker believes is an owner of the commercial real estate interest;
5. a legal description of the property sought to be charged with the lien;
6. the name of any cooperating broker or principal with whom the broker intends to share the commission and a dollar or percentage amount to be shared and;
7. a copy of the Commission Agreement.

**NOTICE OF FILING** (See Attachment B)

Not later than one business day [not a Saturday, Sunday or Holiday recognized by the State of Texas] after the date the Broker files a notice of lien, the Broker must mail a copy of the notice of lien by certified mail, return receipt requested or registered mail to the owner of record or the owner's authorized agent, and the prospective Buyer or tenant and any escrow agent named in a contract for sale or lease: (i) if a binding contract for sale or

lease is in effect and is the basis for the commission and (ii) the binding written contract was executed by the owner and the prospective Buyer or tenant before the notice of lien was filed. If the Broker has actual notice of the identity of the escrow agent named in the contract for sale or lease, or of the escrow agent otherwise closing the sale or lease, the Broker must deliver a file-stamped copy or transmit a facsimile of the file-stamped copy of such notice of lien to each escrow agent at the office in which the closing will occur before the first business day before the date the sale or lease is closed. If the escrow agent receives the notice of lien, the escrow agent and other parties may not close the transaction unless the lien is released, the Buyer or lessee takes title subject to the lien, the funds are held in escrow, or a bond is filed. If the Broker fails to comply with the notice requirements, the notice of lien is void. [Section 62.026 of the Act].

### **INCEPTION OF LIEN**

The lien attaches to commercial real estate owned by the Obligor on the date the notice of lien is recorded. Unlike materialman and mechanic's liens, which relate to the date that work was commenced under an original contract for construction, the Broker's lien does not have as its inception date the date of the Commission Agreement [Section 62.027 of the Act].

### **PRIORITY OF LIEN**

A mortgage or other lien, including a lien securing future advances, recorded before the date the Broker's lien is recorded has priority over the Broker's lien. The Broker's lien is not valid against a Grantee by Lessee or Transferee if the deed, lease or instrument transferring the interest is recorded before the Notice of Broker's Lien is recorded. A purchase money mortgage has priority over a Broker's lien for commission owed by the Buyer against the commercial real estate

interest purchased by the Buyer. This means that even if the Broker's lien is filed prior to the purchase money mortgage being entered into, such purchase money mortgage has a priority over the Broker's lien. A mechanic's lien that is recorded after a Broker's lien and that relates to a date before the Broker's lien is recorded has priority over the Broker's lien [Section 62.028 of the Act].

### **SUBORDINATION OF LIEN**

The Act provides for a subordination of the Broker's lien to a purchase money mortgage or refinance of a recorded first lien or lien for renovation or construction if the Buyer executes an acknowledgment of the Broker's lien and sends notice to the Broker. If the Buyer does so the Broker must execute a subordination agreement no later than seven (7) days after the Broker receives all reasonably requested documents [Section 62.029 of the Act].

### **BROKER-S ADDRESS FOR RECEIPT OF NOTICE**

The Act requires that a Seller, Lessor, Buyer or Tenant send any notice required to be sent to the Broker as follows:

1. at the Broker's request as reflected in records of the Texas Real Estate Commission and
2. at the Broker's last address that the Broker furnished the Seller, Lessor, Buyer or Tenant by certified mail, return receipt requested if the Broker's license is expired [Section 62.005 of the Act].

### **MIXED USE REAL ESTATE**

If the real estate is zoned or restricted for more than one use, the Broker's lien attaches only to the portions of the real estate that

constitute Commercial Real Estate [**Section 62.030 of the Act**].

### **CHANGE IN USE OF REAL ESTATE**

Only the following changes in use of the real estate effect a Broker's lien if the Broker's Notice of Lien was filed when the real estate was commercial real estate:

1. if not later than the 360<sup>th</sup> day after the date on which the Broker commission is payable, commercial real estate interest on which a Broker's claims lien is zoned for single family use or restricted for single family use under recorded restrictive covenants, and
2. zoning ordinance or restrictive covenants for single family use are in effect until at least the second anniversary of the date the commission is payable. [**Section 62.031 of the Act**].

### **TIME TO FILE LIEN**

If a Broker has earned a commission under a Commission Agreement signed by a Seller or the Seller's authorized agent, a Broker must record a Notice of Lien as follows:

1. after a commission is earned and
2. before the conveyance of commercial real estate interest on which the Broker is claiming lien.

If a Broker has earned a commission under a Commission Agreement signed by a prospective Buyer, or a prospective Buyer's authorized agent, the Broker must record a Notice of Lien:

1. after the Buyer acquires legal title to the commercial real estate interest on which the Broker is claiming a lien; and

2. before the Buyer conveys the Buyer's commercial real estate interest on which the Broker is claiming a lien.

If the lien is based on a lease transaction, the Broker must record a notice of lien after the commission is earned and before the earlier of:

1. the 91<sup>st</sup> day after the date the event for which the commission becomes payable occurs; or
2. the date the person obligated to pay the commission records a subsequent conveyance of that person's commercial real estate interest after executing the lease agreement relating to a lease transaction for which the lien is claimed.

If a notice of lien is not filed within the time required, the lien is void [**Section 62.041 of the Act**].

### **SUIT TO FORECLOSE LIEN**

A lawsuit filed under the Act must contain:

1. a description of the commission agreement which forms the basis for the lien, including a description of the disclosure in the commission agreement, the date the commission agreement was executed, the event for which the commission is considered to be earned and the event for which the commission is considered to be payable
2. a description of the services performed by the broker;
3. the amount of the payable commission that is unpaid;
4. a description of the commercial real estate to which the lien attaches; and
5. any other facts necessary for a full understanding of the rights of the parties.

The broker must include as a defendant each person believed to have an interest in the real estate that is subordinate to or encumbered by the broker's lien. If alternative dispute resolution procedures are used to resolve a dispute, the broker's lien remains valid, and any suit to foreclose the lien is stayed until the alternative dispute resolution process is completed [**Section 62.061 of the Act**].

### **STATUTE OF LIMITATIONS**

The Act requires the Broker to bring a suit to foreclose on the lien on or before:

1. the second anniversary date the notice of lien is recorded or
2. if the Broker's lien is for deferred commission then the earlier of the second anniversary of the date the commission is payable or the tenth anniversary date the lien is recorded or the tenth anniversary of the date the Broker records a subsequent renewal notice, whichever is later. A renewal notice must state that it is a renewal of the Broker's lien and must be recorded after the ninth anniversary and before the tenth anniversary of the original filing of the Broker's lien. (*See Attachment F*)
3. The Broker must bring suit to foreclose not later than the 30<sup>th</sup> day after the Broker receives a written demand to bring suit from the owner of the commercial real estate interest. [**Section 62.062 of the Act**].

### **COSTS, ATTORNEYS= FEES AND INTEREST**

The Act does provide that the prevailing party in a suit is entitled to court costs, reasonable attorney's fees and prejudgment interest from the date the commission becomes payable or the damage accrues. [**Section 62.063 of the Act**].

### **RELEASE OF LIEN** (*See Attachment C*)

The Broker is required to furnish a recordable release not later than the fifth day after the date the Broker receives a written request from the owner:

1. if the debt is satisfied or the lien is discharged (by incorporation in the lease)
2. rendered void (due to lack of notice or passage of statute of limitations); or
3. extinguished due to change in use as provided by Section 62.031.

Within ten (10) days after written request for release from the escrow agent, the Broker must furnish a recordable release if the release is conditioned on the Closing and the Broker is required to execute a release on the Closing (i.e. due to the fact that the escrow agent will pay the Broker such commission at Closing or reserve funds for payment of same). [**Section 62.081 of the Act**].

### **ESCROW OF DISPUTED AMOUNTS**

If the lien is not paid at Closing and the existence of such lien would prevent the Closing, the person obligated to pay the commission must establish an escrow account in the amount necessary to satisfy the lien plus fifteen (15%) percent or file a bond [**Sections 62.101 - 62.105 of the Act**].

### **BOND**

The bond must:

1. describe the commercial real estate on which the lien is claimed, refer to the lien claimed in a manner sufficient to identify it,
2. be in an amount that is double the amount of the lien referred to in the bond unless the total amount claimed in the lien

exceeds \$40,000.00 in which case the bond must be in an amount that is 12 times the amount of lien, and

3. be payable to the party claiming the lien,

4. be executed by the party filing the bond as principal and a corporate surety licensed by the State of Texas to execute the bond as surety,

5. be conditions substantially that the principal and sureties will pay the named Obligees or their Assignees, the amount that the name Obligees would be entitled to recovery if the claim had been proved to be valid and enforceable liens on the commercial real estate, and

6. identify the last known mailing address of the person claiming the lien [Section 62.122 of the Act].

### **NOTICE OF BOND**

After the bond is filed, the county clerk shall issue notice of the bond to all named Obligees.

A copy of the bond must be attached to the notice and the notice must be served on each Obligee by mailing a copy of the notice and bond to the Obligee by certified mail, return receipt requested, addressed to the claimant at the address stated in the bond. [Section 62.123 of the Act].

### **RECORDING OF BOND AND NOTICE**

The county clerk shall record the bond, the notice and a certificate of mailing in the Real Property Records. In acquiring an interest in or insuring title to the commercial real estate, a buyer, insurer of title or lender may rely on and is absolutely protected by the record of the bond and the notice to the same extent as if the lien claimant had filed a release of lien in the Real Property Records [Section 62.124 of the Act].

### **ACTION ON BOND**

Any party, making or holding a claim may not sue on the bond later than the last date on which a person may bring suit to foreclose [See Section 62.062 of the Act for the time period].

### **OWNER/TENANT MAY FILE SUIT (DAMAGES)**

An owner or tenant may file suit against Broker under the Act and in an action filed under the Act the court shall discharge a Broker's lien if the Broker:

1. failed to mail a copy of the notice of lien within the period prescribed by Section 62.026;

2. failed to execute, acknowledge and return a subordination agreement within the time period prescribed by Section 62.029;

3. failed to record the notice of lien within the time period prescribed by Section 62.041;

4. failed to release a lien within the time period prescribed by Section 62.081.

Further the Broker is liable to an owner or tenant for damages, as provided, if the Broker recorded a lien on a commercial real estate interest of the owner or tenant and the Broker failed to execute, acknowledge and return a subordination agreement within the time period prescribed by Section 62.029 of the Act or release of lien within the time period prescribed by Section 62.081 of the Act or if a Broker failed to execute a subordination agreement. The court may award actual damages including attorney's fees and court costs incurred by the owner or tenant that are proximately caused by the Broker's failure to execute, acknowledge and return the subordination agreement, release the lien and a

civil penalty in an amount not to exceed three times the amount of the claimed commission if the court finds that the Broker acted with gross negligence or acted in bad faith in

violation of the Texas Real Estate Act. [Section 62.141 of the Act].



\_\_\_\_\_

9. A true, correct and complete copy of the Commission Agreement on which this lien is based is attached hereto as Exhibit \_\_\_\_ and incorporated herein for all purposes.

Further Affiant saith not.

[Broker] [Appraiser]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS        '

  '

COUNTY OF \_\_\_\_\_  '

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

**ATTACHMENT B**

[Broker Letterhead]

[Date]

**NOTICE OF REAL ESTATE BROKER  
[REAL ESTATE APPRAISER] LIEN FILING**

[to be sent not later than 1 business day after the date that Broker files a notice of lien]

*Certified Mail No.* \_\_\_\_\_

*Return Receipt Requested*

[Send to Record owner of commercial real estate interest on which the lien is claimed and any prospective buyer or tenant and any escrow agent named in the contract for the sale or lease of the commercial real estate interest on which the lien is claimed]

Re: Broker's Lien Affidavit and Claim dated \_\_\_\_\_, filed in the Real Property Records of \_\_\_\_\_ County, Texas, on the \_\_\_\_ day of \_\_\_\_\_ in connection with that certain Commission Agreement dated \_\_\_\_\_, by and between \_\_\_\_\_ and \_\_\_\_\_ relating to the real property described in such Commission Agreement

Dear \_\_\_\_\_:

Pursuant to Section 62.026 of the Texas Broker's and Appraiser's Lien on Commercial Real Estate Act, enclosed herewith please find Real Estate Broker's [Real Estate Appraiser's] Lien which was filed against the property in the referenced matter on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. [This date should be one day prior to the date that the letter is sent.]

Very truly yours,

[name of Broker]



SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BROKER**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, in his/her capacity as \_\_\_\_\_ of Broker (the ABroker®), known to me to be the person who executed the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and as the act and deed of said Broker.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**AFTER FILING RETURN TO:**



\_\_\_ year of the Lease if Tenant/tenant name and landlord name/Landlord enter into that certain \_\_\_\_\_ Agreement pursuant to Section \_\_\_ of the Lease.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BROKER**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, in his/her capacity as \_\_\_\_\_ of Broker (ABroker®), known to me to be the person who executed the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and as the act and deed of said Broker.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**AFTER FILING RETURN TO:**

**ATTACHMENT E**

1-1 AN ACT  
1-2 relating to creating a real estate broker's and appraiser's lien on  
1-3 commercial real estate; providing a penalty.  
1-4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-5 SECTION 1. Subtitle B, Title 5, Property Code, is amended by  
1-6 adding Chapter 62 to read as follows:  
1-7 CHAPTER 62. BROKER'S AND APPRAISER'S LIEN ON COMMERCIAL  
1-8 REAL ESTATE  
1-9 SUBCHAPTER A. GENERAL PROVISIONS  
1-10 Sec. 62.001. SHORT TITLE. This chapter may be cited as the  
1-11 Broker's and Appraiser's Lien on Commercial Real Estate Act.  
1-12 Sec. 62.002. APPLICABILITY. (a) This chapter applies only  
1-13 to real estate that is commercial real estate on the date the  
1-14 notice of lien is filed under this chapter.  
1-15 (b) This chapter does not apply to:  
1-16 (1) a transaction involving a claim for a commission  
1-17 of \$2,500 or less in the aggregate; or  
1-18 (2) a transaction for the sale of commercial real  
1-19 estate involving a claim for a commission of \$5,000 or less in the  
1-20 aggregate if the commercial real estate:  
1-21 (A) is the principal place of business of the  
1-22 record title owner;  
1-23 (B) is occupied by more than one and fewer than  
1-24 five tenants; and  
2-1 (C) is improved with 7,500 square feet or less  
2-2 of total gross building area.  
2-3 Sec. 62.003. DEFINITIONS. In this chapter:  
2-4 (1) "Broker" means a person who:  
2-5 (A) is licensed as a real estate broker under  
2-6 The Real Estate License Act (Article 6573a, Vernon's Texas Civil  
2-7 Statutes) and is not acting as a residential rental locator as  
2-8 defined by Section 24, The Real Estate License Act (Article 6573a,  
2-9 Vernon's Texas Civil Statutes); or  
2-10 (B) is licensed or certified as a real estate  
2-11 appraiser under the Texas Appraiser Licensing and Certification Act  
2-12 (Article 6573a.2, Vernon's Texas Civil Statutes).  
2-13 (2) "Commercial real estate" means all real estate  
2-14 except:  
2-15 (A) real estate improved with one to four  
2-16 residential units;  
2-17 (B) a single-family residential unit, including  
2-18 a condominium, townhouse, or home in a subdivision, if the unit is  
2-19 sold, leased, or otherwise conveyed on a unit-by-unit basis and  
2-20 regardless of whether the unit is part of a larger building or  
2-21 located on real estate containing more than four residential units;  
2-22 (C) real estate that is or includes on the real  
2-23 estate a person's homestead;  
2-24 (D) real estate that is not improved with a  
2-25 structure and is:  
2-26 (i) zoned for single-family residential  
2-27 use; or

3-1 (ii) restricted for single-family use  
3-2 under restrictive covenants that will remain in effect for at least  
3-3 the next two years; or  
3-4 (E) real estate that:  
3-5 (i) is primarily used for farming and  
3-6 ranching purposes;  
3-7 (ii) will continue to be used primarily  
3-8 for farming and ranching purposes; and  
3-9 (iii) is located more than three miles  
3-10 from the corporate boundaries of any municipality.  
3-11 (3) "Commission" includes a fee or other valuable  
3-12 consideration.  
3-13 (4) "Commission agreement" means a written instrument  
3-14 that:  
3-15 (A) entitles a broker to a commission;  
3-16 (B) is signed by the person obligated to pay the  
3-17 commission or that person's authorized agent;  
3-18 (C) references the commission amount or  
3-19 describes the formula used to determine the commission amount; and  
3-20 (D) contains a description legally sufficient  
3-21 for identification of the real estate interest that is the subject  
3-22 of the agreement if the person obligated to pay the commission is a  
3-23 seller or lessor.  
3-24 (5) "Deferred commission" means a commission that is  
3-25 earned and is not yet payable.  
3-26 (6) "Real estate" has the meaning assigned by Section  
3-27 2, The Real Estate License Act (Article 6573a, Vernon's Texas Civil  
4-1 Statutes).  
4-2 Sec. 62.004. PAYABLE COMMISSION AND EARNED COMMISSION. (a)  
4-3 A commission is payable at the time provided in the commission  
4-4 agreement. If payment of the commission is conditioned on the  
4-5 occurrence of an event and that event does not occur, the person  
4-6 obligated to pay the commission is not required to pay the  
4-7 commission.  
4-8 (b) Except as provided by Subsection (c), a commission is  
4-9 earned on the earlier of the date that:  
4-10 (1) an event occurs that, under the commission  
4-11 agreement, defines when the commission is earned; or  
4-12 (2) the person obligated to pay the commission enters  
4-13 into a purchase contract or a lease during the period prescribed by  
4-14 the commission agreement for all or part of the commercial real  
4-15 estate if the purchase contract or lease is contemplated by the  
4-16 commission agreement and if the parties to the purchase contract or  
4-17 lease are contemplated by the commission agreement.  
4-18 (c) If a broker has earned a commission under a commission  
4-19 agreement relating to a lease transaction and the commission  
4-20 agreement provides that the broker may receive an additional  
4-21 commission when the lease is modified to expand the lease space or  
4-22 renewed, the additional commission is earned when:  
4-23 (1) the broker performs all the additional services  
4-24 relating to the lease modification or renewal expressly prescribed  
4-25 by the commission agreement; or  
4-26 (2) the broker first earned a commission under the

4-27 commission agreement if the commission agreement does not expressly  
5-1 require the broker to perform additional services relating to a  
5-2 lease modification or renewal.

5-3 Sec. 62.005. BROKER'S ADDRESS FOR RECEIPT OF NOTICE. A  
5-4 seller, lessor, buyer, or tenant shall send any notice required to  
5-5 be sent to the broker under this chapter to the broker:

5-6 (1) at the broker's address as reflected in the  
5-7 records of the Texas Real Estate Commission; and

5-8 (2) at the broker's last address that the broker  
5-9 furnished the seller, lessor, buyer, or tenant by certified mail,  
5-10 return receipt requested, if the broker's license is expired.

5-11 (Sections 62.006-62.020 reserved for expansion)

#### 5-12 SUBCHAPTER B. BROKER'S LIEN

5-13 Sec. 62.021. PERSON ENTITLED TO LIEN. (a) A broker has a  
5-14 lien on a seller's or lessor's commercial real estate interest in  
5-15 the amount specified by the commission agreement if:

5-16 (1) the broker has earned a commission under a  
5-17 commission agreement signed by the seller or lessor of the  
5-18 commercial real estate interest or the seller's or lessor's  
5-19 authorized agent; and

5-20 (2) a notice of lien is recorded and indexed as  
5-21 provided by Section 62.024.

5-22 (b) A broker has a lien on the commercial real estate  
5-23 interest purchased by a prospective buyer in the amount specified  
5-24 by the commission agreement if:

5-25 (1) the broker has earned a commission under a  
5-26 commission agreement signed by the prospective buyer of the  
5-27 commercial real estate interest or the prospective buyer's  
6-1 authorized agent; and

6-2 (2) a notice of lien is recorded and indexed as  
6-3 provided by Section 62.024.

6-4 (c) A broker has a lien on the leasehold interest in the  
6-5 commercial real estate that a prospective tenant leases in the  
6-6 amount specified by the commission agreement if:

6-7 (1) the broker has earned a commission under a  
6-8 commission agreement signed by the prospective tenant of the  
6-9 commercial real estate interest or the prospective tenant's  
6-10 authorized agent; and

6-11 (2) a notice of lien is recorded and indexed as  
6-12 provided by Section 62.024.

6-13 (d) A lien described by this section is available only to  
6-14 the broker named in the commission agreement. The lien is not  
6-15 available to an employee or independent contractor of the broker.

6-16 (e) The broker's right to claim a lien based on the  
6-17 commission agreement must be disclosed in the commission agreement.

6-18 Sec. 62.022. WAIVER, RELEASE, OR DISCHARGE OF LIEN;  
6-19 ASSUMPTION OF COMMISSION OBLIGATION. (a) Except as provided by  
6-20 Subsection (b), the waiver of a broker's right to a lien under this  
6-21 chapter, or a release given for the purpose of releasing the  
6-22 broker's lien before the commission is satisfied or forgiven, is  
6-23 void.

6-24 (b) A broker's entitlement to a lien on the interest of an  
6-25 owner or tenant in commercial real estate shall be automatically

6-26 waived if:

6-27 (1) the commission is earned and payable for services  
7-1 provided relating to a lease transaction; and  
7-2 (2) the commission agreement is included as a  
7-3 provision of the lease agreement.

7-4 (c) A lien under this chapter is discharged by:

7-5 (1) a court order discharging the lien;  
7-6 (2) paying the commission to the broker named in the  
7-7 commission agreement; or  
7-8 (3) establishing an escrow account described by  
7-9 Subchapter F.

7-10 (d) A person who assumes an owner's or tenant's commercial  
7-11 real estate interest is bound by a commission agreement included in  
7-12 a lease agreement unless an escrow account is established under  
7-13 Subchapter F or a bond is provided under Subchapter G.

7-14 (e) This section does not affect the rights of a mortgagee  
7-15 who forecloses on commercial real estate and does not assume the  
7-16 lease on which a commission agreement is based.

7-17 Sec. 62.023. AFFIDAVIT IDENTIFYING BROKER. If requested by  
7-18 the buyer, the buyer's authorized agent, or the escrow agent for  
7-19 the commercial real estate transaction, the seller of commercial  
7-20 real estate and the broker representing the seller shall provide to  
7-21 the requesting party before the closing of the transaction a  
7-22 written affidavit identifying each broker with whom the affiant  
7-23 knows or believes the seller or the seller's authorized agent has  
7-24 signed a commission agreement under which a commission is claimed  
7-25 or earned and has not been paid.

7-26 Sec. 62.024. FILING OF NOTICE OF LIEN. (a) A broker  
7-27 claiming a lien under this chapter may not file a notice of lien  
8-1 unless the commission on which the lien is based is earned.

8-2 (b) A broker claiming a lien under this chapter must file a  
8-3 notice of lien as provided by Subchapter C with the county clerk of  
8-4 the county in which the commercial real estate is located.

8-5 (c) The county clerk shall record the notice of lien in  
8-6 records kept for that purpose and shall index and cross-index the  
8-7 notice of lien in the names of the broker, each person obligated to  
8-8 pay the commission under the commission agreement, and each person  
8-9 who owns an interest in the commercial real estate if the broker  
8-10 claims a lien on that interest.

8-11 Sec. 62.025. CONTENTS OF NOTICE OF LIEN. The notice of lien  
8-12 must be signed by the broker or by a person authorized to sign on  
8-13 behalf of the broker and must contain the following:

8-14 (1) a sworn statement of the nature and amount of the  
8-15 claim, including:

8-16 (A) the commission amount or the formula used to  
8-17 determine the commission;

8-18 (B) the type of commission at issue, including a  
8-19 deferred commission; and  
8-20 (C) the month and year in which the commission  
8-21 was earned;

8-22 (2) the name of the broker and the real estate license  
8-23 number of the broker;

8-24 (3) the name as reflected in the broker's records of

8-25 any person who the broker believes is obligated to pay the  
8-26 commission under the commission agreement;

8-27 (4) the name as reflected in the broker's records of  
9-1 any person the broker believes to be an owner of the commercial  
9-2 real estate interest on which the lien is claimed;

9-3 (5) a description legally sufficient for  
9-4 identification of the commercial real estate interest sought to be  
9-5 charged with the lien;

9-6 (6) the name of any cooperating broker or principal in  
9-7 the transaction with whom the broker intends to share the  
9-8 commission and the dollar or percentage amount to be shared; and  
9-9 (7) a copy of the commission agreement on which the  
9-10 lien is based.

9-11 Sec. 62.026. NOTICE OF FILING. (a) In this section,  
9-12 "business day" means a day other than a Saturday, Sunday, or  
9-13 holiday recognized by this state.

9-14 (b) Not later than one business day after the date the  
9-15 broker files a notice of lien, the broker shall mail a copy of the  
9-16 notice of lien by certified mail, return receipt requested, or  
9-17 registered mail to:

9-18 (1) the owner of record of the commercial real estate  
9-19 interest on which the lien is claimed or the owner's authorized  
9-20 agent; and

9-21 (2) the prospective buyer or tenant and any escrow  
9-22 agent named in a contract for the sale or lease of the commercial  
9-23 real estate interest on which the lien is claimed if:

9-24 (A) a binding written contract for the sale or  
9-25 lease of the commercial real estate interest is in effect between  
9-26 the owner and the prospective buyer or tenant in a transaction that  
9-27 is the basis for the commission; and

10-1 (B) the binding written contract was executed by  
10-2 the owner and the prospective buyer or tenant before the date the  
10-3 notice of lien is filed.

10-4 (c) Service of the notice under Subsection (b) is complete  
10-5 when the notice is deposited in the United States mail, postage  
10-6 prepaid, and addressed to the persons entitled to receive the  
10-7 notice under this section.

10-8 (d) If the broker has actual knowledge of the identity of  
10-9 the escrow agent named in the contract for the sale or lease of the  
10-10 commercial real estate interest on which the broker claims a lien  
10-11 or of the escrow agent otherwise closing the sale or lease of the  
10-12 commercial real estate interest, the broker, before the first  
10-13 business day before the date that the sale or lease is closed on  
10-14 commercial real estate for which a notice of lien is filed, shall  
10-15 deliver a file-stamped copy or transmit a facsimile of a  
10-16 file-stamped copy of the notice of lien to each escrow agent at the  
10-17 office in which the closing of the sale or lease will occur for use  
10-18 during the closing of the sale or lease. The broker shall deliver  
10-19 the copy or transmit the facsimile directly to the individual  
10-20 escrow agent responsible for closing the sale or lease if the  
10-21 broker knows that person's name.

10-22 (e) If the escrow agent receives the notice of lien, the  
10-23 escrow agent and other parties to the sale or lease may not close

10-24 the transaction unless the lien is released, the prospective buyer  
10-25 or tenant purchases or leases the property subject to the lien, the  
10-26 funds are held in escrow as provided by Subchapter F, or a bond is  
10-27 filed as provided by Subchapter G.

11-1 (f) If the broker fails to comply with this section, the  
11-2 notice of lien is void.

11-3 Sec. 62.027. INCEPTION OF BROKER'S LIEN. (a) A broker's  
11-4 lien attaches to the commercial real estate interest owned by the  
11-5 person obligated to pay the commission on the date the notice of  
11-6 lien is recorded as provided by this chapter. The lien does not  
11-7 relate back to the date of the commission agreement.

11-8 (b) A notice of lien for amounts earned by the broker under  
11-9 an installment contract or under a commission agreement for a  
11-10 deferred commission is enforceable only to the extent that the  
11-11 installment or commission has become payable.

11-12 Sec. 62.028. PRIORITY. (a) A recorded lien, mortgage, or  
11-13 other encumbrance on commercial real estate, including a recorded  
11-14 lien securing revolving credit and future advances for a loan,  
11-15 recorded before the date a broker's lien is recorded has priority  
11-16 over the broker's lien.

11-17 (b) A broker's lien on the commercial real estate interest  
11-18 of a person obligated to pay a commission is not valid or  
11-19 enforceable against a grantee, buyer, lessee, or transferee of the  
11-20 interest of the person obligated to pay the commission if the deed,  
11-21 lease, or instrument transferring the interest is recorded before  
11-22 the notice of the broker's lien is recorded.

11-23 (c) A purchase-money mortgage lien executed by the buyer of  
11-24 the commercial real estate interest has priority over a broker's  
11-25 lien claimed for the commission owed by the buyer against the  
11-26 commercial real estate interest purchased by the buyer.

11-27 (d) A mechanic's lien that is recorded after a broker's lien  
12-1 and that relates back to a date before the date the broker's lien  
12-2 is recorded has priority over the broker's lien.

12-3 Sec. 62.029. SUBORDINATION. (a) If the person obligated to  
12-4 pay the commission sells that person's commercial real estate  
12-5 interest, the broker's lien is subordinate to a recorded  
12-6 purchase-money first lien authorized by the buyer if the buyer:

12-7 (1) executes and files with the county clerk of the  
12-8 county in which the broker's lien is filed a memorandum that  
12-9 evidences the buyer's acknowledgment of the existence of the  
12-10 broker's lien; and

12-11 (2) sends the broker, by certified mail, return  
12-12 receipt requested, or registered mail, a copy of the recorded  
12-13 memorandum required by this subsection.

12-14 (b) If the person obligated to pay the commission refinances  
12-15 a recorded first lien secured by that person's commercial real  
12-16 estate interest, the broker's lien is subordinate to the recorded  
12-17 refinanced first lien, regardless of the amount of the first lien  
12-18 after refinancing, if the person obligated to pay the commission:

12-19 (1) executes and files with the county clerk of the  
12-20 county in which the broker's lien is filed a memorandum that  
12-21 evidences the person's acknowledgment of the existence of the  
12-22 broker's lien; and

12-23 (2) sends the broker, by certified mail, return  
12-24 receipt requested, or registered mail, a copy of the recorded  
12-25 memorandum required by this subsection.

12-26 (c) If the person obligated to pay the commission obtains an  
12-27 extension of credit secured by that person's commercial real estate  
13-1 interest, the broker's lien is subordinate to the lien securing the  
13-2 extension of credit if, according to the loan documents, the  
13-3 extension of credit is made only for the purpose of:

13-4 (1) repairing or renovating the commercial real  
13-5 estate; or

13-6 (2) completing construction or providing additional  
13-7 improvements on the commercial real estate.

13-8 (d) If the person obligated to pay the commission furnishes  
13-9 a subordination agreement as provided by this section to be  
13-10 executed by the broker, the broker must:

13-11 (1) execute and acknowledge the subordination  
13-12 agreement before a notary public; and

13-13 (2) return the subordination agreement to the person  
13-14 not later than the seventh day after the date the broker receives  
13-15 the subordination agreement and other documents the broker  
13-16 reasonably requests in order to determine that the subordination  
13-17 agreement complies with this section.

13-18 Sec. 62.030. MIXED-USE REAL ESTATE. If real estate is zoned  
13-19 or restricted for more than one use, the broker's lien attaches  
13-20 only to the portions of the real estate that constitute commercial  
13-21 real estate.

13-22 Sec. 62.031. CHANGE IN USE OF REAL ESTATE. (a) Except as  
13-23 provided by Subsection (b), any change in the use of the real  
13-24 estate does not affect a broker's lien if the notice of the lien  
13-25 was filed when the real estate was commercial real estate.

13-26 (b) The broker's lien is extinguished if:

13-27 (1) not later than the 360th day after the date on  
14-1 which the broker's commission is payable, the commercial real  
14-2 estate interest on which a broker claims a lien is zoned for  
14-3 single-family use or restricted for single-family use under  
14-4 recorded restrictive covenants; and

14-5 (2) the zoning ordinances or restrictive covenants for  
14-6 single-family use are in effect until at least the second  
14-7 anniversary of the date the commission is payable.

14-8 (Sections 62.032-62.040 reserved for expansion)

14-9 SUBCHAPTER C. TIME FOR FILING NOTICE OF LIEN

14-10 Sec. 62.041. TIME TO FILE. (a) If a broker has earned a  
14-11 commission under a commission agreement signed by a seller or the  
14-12 seller's authorized agent, a broker must record a notice of lien:

14-13 (1) after the commission is earned; and

14-14 (2) before the conveyance of the commercial real  
14-15 estate interest on which the broker is claiming a lien.

14-16 (b) If a broker has earned a commission under a commission  
14-17 agreement signed by a prospective buyer or a prospective buyer's  
14-18 authorized agent, the broker must record a notice of lien:

14-19 (1) after the buyer acquires legal title to the  
14-20 commercial real estate interest on which the broker is claiming a  
14-21 lien; and

14-22 (2) before the buyer conveys the buyer's commercial  
14-23 real estate interest on which the broker is claiming a lien.  
14-24 (c) If the lien is based on a lease transaction, the broker  
14-25 must record a notice of lien after the commission is earned and  
14-26 before the earlier of:

14-27 (1) the 91st day after the date the event for which  
15-1 the commission becomes payable occurs; or  
15-2 (2) the date the person obligated to pay the  
15-3 commission records a subsequent conveyance of that person's  
15-4 commercial real estate interest after executing the lease agreement  
15-5 relating to the lease transaction for which the lien is claimed.

15-6 (d) If a notice of lien is not filed within the time  
15-7 required by this section, the lien is void.

15-8 (Sections 62.042-62.060 reserved for expansion

15-9 **SUBCHAPTER D. ENFORCEMENT OF LIEN**

15-10 **Sec. 62.061. SUIT TO FORECLOSE LIEN.** (a) A broker may not  
15-11 bring a suit to foreclose a lien under this chapter unless the  
15-12 commission is earned and payable. A broker may bring a suit to  
15-13 foreclose a lien in any district court for the county in which the  
15-14 commercial real estate is located by filing a sworn complaint  
15-15 stating that the notice of lien has been recorded.

15-16 (b) A complaint in a suit filed under this section must  
15-17 contain:

15-18 (1) a brief description of the commission agreement  
15-19 that is the basis for the lien, including:

15-20 (A) a description of the disclosure of the  
15-21 broker's right to the lien contained in the commission agreement;

15-22 (B) the date on which the commission agreement  
15-23 was executed;

15-24 (C) the event for which a commission is  
15-25 considered to be earned; and

15-26 (D) the event for which a commission is  
15-27 considered to be payable;

16-1 (2) a description of the services performed by the  
16-2 broker;

16-3 (3) the amount of the payable commission that is  
16-4 unpaid;

16-5 (4) a description of the commercial real estate to  
16-6 which the lien attaches; and

16-7 (5) other facts necessary for a full understanding of  
16-8 the rights of the parties.

16-9 (c) The broker must include as a defendant in a suit brought  
16-10 under this subchapter each person the broker believes to have an

16-11 interest in the commercial real estate that is subordinate to or  
16-12 encumbered by the broker's lien.

16-13 (d) If the broker and a person against whom the broker  
16-14 claims a commission use alternative dispute resolution procedures  
16-15 to resolve a dispute concerning entitlement to the broker's  
16-16 commission, the broker's lien remains valid, and any suit to  
16-17 foreclose the lien is stayed until the alternative dispute  
16-18 resolution process is completed.

16-19 **Sec. 62.062. STATUTE OF LIMITATIONS.** (a) Except as

16-20 provided by this section, a broker claiming a lien under this  
16-21 chapter must bring a suit to foreclose the lien on or before the  
16-22 second anniversary of the date the notice of lien is recorded.  
16-23 (b) A broker claiming a lien to collect a deferred  
16-24 commission must bring a suit to foreclose the lien on or before the  
16-25 earlier of:

16-26 (1) the second anniversary of the date on which the  
16-27 commission is payable; or

17-1 (2) the 10th anniversary of the date the lien is  
17-2 recorded or the 10th anniversary of the date the broker records a  
17-3 subsequent notice of the lien as a renewal of the broker's right to  
17-4 the lien, whichever date is later.

17-5 (c) A renewal of a notice of lien must state that it is a  
17-6 renewal of the broker's lien and must be recorded after the ninth  
17-7 anniversary after the date the original notice of lien or last  
17-8 renewal notice is recorded and on or before the 10th anniversary of  
17-9 the date the original notice of lien or last renewal notice is  
17-10 recorded.

17-11 (d) A broker claiming a lien for a commission that is  
17-12 payable must bring a suit to foreclose the lien not later than the  
17-13 30th day after the date the broker receives a written demand to  
17-14 bring a suit to foreclose the lien from the owner of the commercial  
17-15 real estate interest on which the lien is claimed.

17-16 (e) If a suit to foreclose the lien is not brought within  
17-17 the period prescribed by this section, the lien is void.

17-18 Sec. 62.063. ASSESSMENT OF COSTS, FEES, AND INTEREST. The  
17-19 prevailing party in a suit brought under this subchapter is  
17-20 entitled to court costs, reasonable attorney's fees, and  
17-21 prejudgment interest from the date the commission becomes payable  
17-22 or the date the damage accrues.

17-23 (Sections 62.064-62.080 reserved for expansion)

#### 17-24 SUBCHAPTER E. RELEASE OF LIEN

17-25 Sec. 62.081. RELEASE OF LIEN. (a) Not later than the fifth  
17-26 day after the date a broker receives a written request from the  
17-27 owner of a commercial real estate interest on which a lien is  
18-1 claimed, the broker shall furnish to the owner a release of  
18-2 indebtedness and any lien claimed if:

18-3 (1) the debt that is the basis for the lien is  
18-4 satisfied; or

18-5 (2) the lien is discharged under Section 62.022,  
18-6 rendered void under Section 62.026 or 62.062, or extinguished under  
18-7 Section 62.031.

18-8 (b) When a condition occurs that would preclude the broker  
18-9 from receiving a commission under the terms of the commission  
18-10 agreement that is the basis for the lien, the broker shall, not  
18-11 later than the 10th day after the date the broker receives a  
18-12 written request from the owner of the commercial real estate  
18-13 interest on which the lien is claimed, furnish to the owner a  
18-14 release of indebtedness and any lien claimed.

18-15 (c) Not later than the 10th day after the date a broker  
18-16 receives a written request for the release of the broker's lien  
18-17 from the escrow agent responsible for closing the purchase and  
18-18 sale of a commercial real estate interest on which the lien is

18-19 claimed, the broker shall furnish to the escrow agent a release of  
18-20 indebtedness and any lien claimed if:

18-21 (1) the commercial real estate interest to which the  
18-22 lien attaches is subject to a contract for purchase and sale;

18-23 (2) the release of indebtedness and any lien claimed  
18-24 is conditioned on the closing of the transaction; and

18-25 (3) the broker would otherwise be obligated to release  
18-26 the indebtedness and any lien claimed under Subsection (a) or (b)  
18-27 on the closing of the transaction.

19-1 (d) A release of lien must be in a form that permits the  
19-2 instrument to be filed of record.

19-3 (Sections 62.082-62.100 reserved for expansion

#### 19-4 SUBCHAPTER F. ESCROW OF DISPUTED AMOUNTS

19-5 Sec. 62.101. ESCROW ACCOUNT. If a claim for a lien under a  
19-6 recorded notice of lien is not paid or assumed at the closing of a  
19-7 sale, lease, or mortgage of the commercial real estate interest  
19-8 subject to the lien and would prevent the closing of the  
19-9 transaction or conveyance or if a claim for a lien under a recorded  
19-10 notice of lien does not survive the closing, any person named in  
19-11 the notice of lien as obligated to pay the commission shall, on the  
19-12 date of the closing:

19-13 (1) establish an escrow account from any net proceeds  
19-14 of the transaction or conveyance in an amount equal to the amount  
19-15 sufficient to satisfy the lien plus 15 percent of that amount; or

19-16 (2) file a bond to indemnify against the lien as  
19-17 provided by Subchapter G.

19-18 Sec. 62.102. NAMED ESCROW AGENT. If an escrow agent is  
19-19 named in the contract on which the transaction or conveyance is  
19-20 based, the escrow account shall be established with the named  
19-21 escrow agent.

19-22 Sec. 62.103. COSTS OF INTERPLEADER. Related costs for any  
19-23 interpleader action may be deducted from the escrow account by the  
19-24 person maintaining the escrow account.

#### 19-25 Sec. 62.104. REFUSAL TO ESTABLISH ESCROW ACCOUNT OR BOND.

19-26 (a) A party may not refuse to close a transaction because of the  
19-27 requirement to establish an escrow account or bond as provided by  
20-1 Section 62.101 if:

20-2 (1) the broker provides a copy of the notice of lien  
20-3 that complies with Sections 62.025 and 62.026;

20-4 (2) sufficient proceeds will result from the proposed  
20-5 transaction for the payment of the commission and costs of the  
20-6 interpleader; and

20-7 (3) the broker executes and delivers a full release  
20-8 of the broker's lien in a recordable form.

20-9 (b) A prospective buyer of a commercial real estate interest  
20-10 may not refuse to close the purchase solely because a broker's lien  
20-11 is filed after the date a title commitment or abstract of title  
20-12 relating to the interest is issued if an escrow account is  
20-13 established as provided by this subchapter or a bond is filed as  
20-14 provided by Subchapter G.

20-15 Sec. 62.105. TERM OF ESCROW ACCOUNT. The amount held in  
20-16 escrow shall be held in escrow until:

20-17 (1) the rights of the parties claiming the amount in

20-18 escrow are determined by a written agreement of the parties, a  
20-19 court order, or an alternative dispute resolution process agreed to  
20-20 by the parties;

20-21 (2) the broker's lien is no longer enforceable; or

20-22 (3) the funds are interpled into a district court for  
20-23 the county in which the commercial real estate is located.

20-24 Sec. 62.106. EXTINGUISHMENT OF LIEN UPON ESCROW. When the  
20-25 escrow account is established under this subchapter, the broker's  
20-26 lien against the commercial real estate is extinguished and becomes  
20-27 a lien on the proceeds in the escrow account.

21-1 (Sections 62.107-62.120 reserved for expansion

21-2 SUBCHAPTER G. BOND TO INDEMNIFY AGAINST LIEN

21-3 Sec. 62.121. BOND. (a) If a lien is fixed or is attempted  
21-4 to be fixed by a recorded instrument under this chapter, any  
21-5 person may file a bond to indemnify against the lien.

21-6 (b) The bond shall be filed with the county clerk of the  
21-7 county in which the commercial real estate subject to the lien is  
21-8 located.

21-9 Sec. 62.122. BOND REQUIREMENTS. The bond must:

21-10 (1) describe the commercial real estate on which the  
21-11 lien is claimed;

21-12 (2) refer to the lien claimed in a manner sufficient  
21-13 to identify it;

21-14 (3) be in an amount that is double the amount of the  
21-15 lien referred to in the bond as of the date of execution of the  
21-16 bond by the surety, unless the total amount claimed in the lien  
21-17 exceeds \$40,000, in which case the bond must be in an amount that  
21-18 is 1-1/2 times the amount of the lien;

21-19 (4) be payable to the party claiming the lien;

21-20 (5) be executed by:

21-21 (A) the party filing the bond as principal; and

21-22 (B) a corporate surety licensed by this state to  
21-23 execute the bond as surety;

21-24 (6) be conditioned substantially that the principal  
21-25 and sureties will pay the named obligees or their assignees the  
21-26 amount that the named obligees would have been entitled to recover  
21-27 if their claim had been proved to be valid and enforceable liens on  
22-1 the commercial real estate; and

22-2 (7) identify the last known mailing address of the  
22-3 person claiming the lien.

22-4 Sec. 62.123. NOTICE OF BOND. (a) After the bond is filed,  
22-5 the county clerk shall issue notice of the bond to all named  
22-6 obligees.

22-7 (b) A copy of the bond must be attached to the notice.

22-8 (c) The notice must be served on each obligee by mailing a  
22-9 copy of the notice and the bond to the obligee by certified mail,  
22-10 return receipt requested, addressed to the claimant at the address  
22-11 stated in the bond for the obligee.

22-12 Sec. 62.124. RECORDING OF BOND AND NOTICE. (a) The county  
22-13 clerk shall record the bond, the notice, and a certificate of  
22-14 mailing in the real property records.

22-15 (b) In acquiring an interest in or insuring title to the  
22-16 commercial real estate, a buyer, insurer of title, or lender may

22-17 rely on and is absolutely protected by the record of the bond and  
22-18 the notice to the same extent as if the lien claimant had filed a  
22-19 release of lien in the real property records.

22-20 Sec. 62.125. ACTION ON BOND. (a) A party making or holding  
22-21 a lien claim may not sue on the bond later than the last date on  
22-22 which a person may bring a suit to foreclose the lien under Section  
22-23 62.062.

22-24 (b) The bond is not exhausted by one action against it.  
22-25 Each named obligee or assignee of an obligee may maintain a  
22-26 separate suit on the bond in any district court for the county in  
22-27 which the commercial real estate is located.

23-1 (Sections 62.126-62.140 reserved for expansion

#### 23-2 SUBCHAPTER H. REMEDIES

23-3 Sec. 62.141. OWNER'S OR TENANT'S REMEDIES. (a) An owner or  
23-4 tenant may file suit against a broker under this chapter.

23-5 (b) In an action filed under this section, the court shall  
23-6 discharge a broker's lien if the broker:

23-7 (1) failed to mail a copy of the notice of lien within  
23-8 the period prescribed by Section 62.026;

23-9 (2) failed to execute, acknowledge, and return a  
23-10 subordination agreement within the period prescribed by Section  
23-11 62.029(d);

23-12 (3) failed to record the notice of lien within the  
23-13 period prescribed by Section 62.041; or

23-14 (4) failed to release a lien within the period  
23-15 prescribed by Section 62.081.

23-16 (c) A broker is liable to an owner or tenant for damages as  
23-17 provided by Subsection (d) if:

23-18 (1) the broker recorded a lien on the commercial real  
23-19 estate interest of the owner or tenant;

23-20 (2) the broker failed to:

23-21 (A) execute, acknowledge, and return a  
23-22 subordination agreement within the period prescribed by Section  
23-23 62.029(d); or

23-24 (B) release a lien within the period prescribed  
23-25 by Section 62.081;

23-26 (3) the owner, tenant, or escrow agent mailed to the  
23-27 broker by certified mail, return receipt requested, a copy of this  
24-1 section and a notice requesting the broker to execute, acknowledge,  
24-2 and return the subordination agreement or release the lien not  
24-3 later than the 10th day after the date the broker receives the  
24-4 notice; and

24-5 (4) the broker failed to comply with the owner's,  
24-6 tenant's, or escrow agent's written notice within the prescribed  
24-7 period.

24-8 (d) If the court finds that a broker is liable to an owner  
24-9 or tenant under Subsection (c), the court may award the owner or  
24-10 tenant:

24-11 (1) actual damages, including attorney's fees and  
24-12 court costs, incurred by the owner or tenant that are proximately  
24-13 caused by the broker's failure to execute, acknowledge, and return  
24-14 the subordination agreement or release the lien; and

24-15 (2) a civil penalty in an amount not to exceed three

24-16 times the amount of the claimed commission if the court finds that  
24-17 the broker acted with gross negligence or acted in bad faith in  
24-18 violation of The Real Estate License Act (Article 6573a, Vernon's  
24-19 Texas Civil Statutes).

24-20 (e) This section does not prevent:

24-21 (1) a person from filing a complaint with the Texas  
24-22 Real Estate Commission against a broker who fails to comply with  
24-23 this chapter; or

24-24 (2) the Texas Real Estate Commission at any time from  
24-25 investigating or initiating a disciplinary proceeding against a  
24-26 broker who fails to comply with this chapter.

24-27 Sec. 62.142. BROKER'S REMEDIES. (a) A broker may file suit  
25-1 against an owner or tenant to enforce a commission agreement.

25-2 (b) If the court finds that the broker waived the right to  
25-3 file a lien under Section 62.022 and that the owner or tenant  
25-4 violated the commission agreement, the court may award to the  
25-5 broker:

25-6 (1) actual damages, including attorney's fees and  
25-7 court costs, that are proximately caused by the owner's or tenant's  
25-8 failure to comply with the commission agreement; and

25-9 (2) a civil penalty in an amount not to exceed three  
25-10 times the amount of the claimed commission if the court finds that  
25-11 the owner or tenant acted with gross negligence or in bad faith.

25-12 SECTION 2. The change in law made by Chapter 62, Property  
25-13 Code, as added by this Act, applies only to an agreement to  
25-14 compensate a licensed real estate broker or appraiser that is  
25-15 entered into on or after the effective date of this Act.

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President of the Senate                      Speaker of the House

I certify that H.B. No. 1052 was passed by the House on April  
27, 1999, by a non-record vote; and that the House concurred in  
Senate amendments to H.B. No. 1052 on May 27, 1999, by a non-record  
vote.

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Chief Clerk of the House

I certify that H.B. No. 1052 was passed by the Senate, with  
amendments, on May 24, 1999, by a viva-voce vote.

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Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

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Governor



## **BROKER LIEN CHECKLIST**

- \$ Written Commission Agreement (' 62.003) which discloses right to claim lien (' 62.021)
- \$ Commission must be earned (' 62.004)
- \$ Lien available only to Broker named in Commission Agreement (' 62.021)
- \$ Lien must be filed (' 62.024)
- \$ Lien must contain certain information (' 62.025)
- \$ Notice of Lien must be given (' 62.026)
- \$ Broker must subordinate lien within 7 days in certain circumstances (' 62.029)
- \$ Time to file lien (' 62.041)
- \$ Time to bring suit to foreclose (' 62.062)
- \$ Release of lien when required (' 62.081)

## BROKER LIEN TIMELINE

<b>Record Broker's Lien</b>	<u><b>Seller Owes Commission</b></u> After commission earned before conveyance of Real Property.	<u><b>Buyer Owes Commission</b></u> After commission earned, after Buyer is conveyed Property and before Buyer conveys Property	<u><b>Lease Transactions</b></u> After commission is earned and <u>before</u> earlier of: (1) 91 <sup>st</sup> day after date the event for which commission is payable (e.g. lease signing, lease commencement date, renewal, etc.); or (2) the date the person/entity owing the commission conveys the Real Property or Leased Premises
<b>Send Notice</b>	One business day after recording of lien	Same	Same
<b>Suit to Foreclose</b>	\$ Generally 2 years from date notice of lien recorded \$ Exception deferred commission then: earlier of (i) two years from date commission payable or (ii) ten years after lien recorded or ten years after Broker records renewal notice whichever is later \$ In all cases not later than 30 days after Broker receives a written demand to bring suit from owner of Property	Same	Same
<b>Action on Bond</b>	Not later than the date upon which a suit to foreclose could be filed	Same	Same