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COMMERCIAL LEASE NEWSLETTER

The Florida Commercial Commission Leasing Act: How to protect your rights to your commission

Commercial Leasing Commissions can be difficult to collect, but a 2005 Law has equipped Real Estate Professionals a powerful tool to make collections easier. This article will address the problems faced by the commercial leasing agents with commission collection and the way Florida's Commercial Lease Commission's Lien Act empowers agents to enforce their commission agreements.

Unlike traditional real estate closings, where an escrow agent disburses funds held in trust according to the terms of a settlement statement, lease agreements can be closed without a means to ensure commission payment. This arrangement puts leasing agents in the undesirable position of seeking collection after services have been fully rendered.

Leasing agents in the current market are experiencing this problem on a regular basis, and tens of thousands of earned commission go uncollected.

In 2005 the Florida Legislature passed a bill which addresses this problem. The law is called the Florida Commercial Leasing Commission Lien Act ("FCLCLA")(Florida Statute §475.803). The law empowers real estate agents to record, and ultimately foreclose, a lien for unpaid commissions due on a leasing agreement.

The benefits of this statute depend upon strict adherence to specific disclosures and notice deadlines. A discussion of these requirements must begin with the leasing agreement. Form leasing agreements should be *used with caution*. Although they provide convenience, their terms may compromise leasing agents' legal remedies.

§475.803 requires that a specific disclosure be provided to the property owner at the time of executing the listing agreement.

Without evidence of this notice, the leasing agent will not be able to utilize the lien process to facilitate collection of their commissions.

Beyond the required FCLCLA disclosure, the other provisions to the standard exclusive right to lease agreement must be planned to harmonize with the FCLCLA relief. For example, the alternate dispute resolution provision requiring arbitration may jeopardize a leasing agent's rights under the FCLCLA.

The recommended procedure for leasing agreement preparation is to work with an attorney to customize the terms of the listing agreement to ensure that all necessary disclosures are included in appropriate addendums, and that the terms of the contract best protect the interests of the leasing agent in regard to earning and actually collecting their commission.