

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 737 Lis Pendens
SPONSOR(S): Civil Justice & Courts Policy Committee; Wood
TIED BILLS: None IDEN./SIM. BILLS: SB 1552

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, 9 Y, 0 N, As CS, Bond, De La Paz. Row 2: Insurance, Business & Financial Affairs Policy Committee, Snider, Cooper. Rows 3-5 are empty.

SUMMARY ANALYSIS

A lis pendens is a document filed in the property records that gives notice of a pending lawsuit that may affect title to real property. This bill amends lis pendens laws to:

- Limit the effect of a lis pendens.
Extend the time for a holder of an unrecorded interest to intervene in the action.
Simplify the information necessary for filing a valid lis pendens.
Require a court to extinguish a lis pendens where appropriate.

This bill does not appear to have a fiscal effect on state or local governments.

This bill will take effect on July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

A lis pendens is a means by which a party involved in a lawsuit notifies others that the party asserts an interest in real property that is or will be adjudicated in a pending lawsuit. It becomes effective when recorded in the public records of the county in which the real property is situated, and its priority is the same as any other recorded instrument.

Section 48.23, F.S. governs lis pendens. It provides that the mere filing of a lawsuit does not have the effect of a lis pendens, the notice of lis pendens must be recorded. The recorded lis pendens document must contain¹:

- Names of the parties
- Time of institution of the action
- Name of the court in which it is pending
- Description of the property involved or to be affected
- Statement of the relief sought as to the property.

If any of this information is not included or is incorrect, the lis pendens is not valid.²

If the property described in the lis pendens is sold at judicial sale, the claim of any person in an unrecorded interest in the real property is barred, unless the person holding the unrecorded interest moves to intervene in the lawsuit within 20 days of the recording of the lis pendens. This does not apply to the interest of persons in possession or easements of use.³

If a lis pendens is based on a recorded instrument (such as a mortgage) or on a mechanics lien, it has no time limit and may not be discharged except upon dismissal of the lawsuit. Any other lis pendens is only effective for one year, unless the court extends the time. An extension must be based on cause and the hearing must be noticed. The court may impose conditions on an extension. Also, the court may control any such lis pendens as the court may grant and dissolve injunctions.

¹ Section 48.23(1)(a), F.S.

² *Oz v. Countrywide Home Loans, Inc.*, 953 So.2d 619 (Fla. 3rd DCA 2007).

³ Section 48.23(2), F.S.

Effect of Bill

Effect of Lis Pendens

Although current law appears to limit the effect of a lis pendens to one year where the lis pendens is not related to a recorded instrument or construction lien, in practice attorneys and title insurance companies believe that they have legal effect beyond that period. They point to the legal requirement that a seller of property disclose all material facts affecting value; and to the possibility that a pending lawsuit, even if there is no effective lis pendens, may ultimately affect title even in a purchaser. This bill amends s. 48.23, F.S., to specifically provide that lis pendens, other than one based on a recorded instrument or construction lien, will expire and have no effect on a future unrelated purchaser for value.

An action for specific performance is a lawsuit to compel a party to a contract to comply with the terms of the contract. In real estate, buyers will occasionally file such suits to compel the seller to accept payment and sign a deed where the seller is refusing to memorialize the transaction. A lis pendens is typically filed in such suits to protect the buyer; because with a valid lis pendens pending a third party buyer purchases subject to the potential loss of the property to the former buyer who has sued for specific performance. This bill provides that, in a case for specific performance where there is no valid lis pendens, only the parties to the lawsuit (and their lawful heirs and assigns) are subject to being forced to convey the property, thereby protecting a third party purchaser.

Time to Intervene

This bill extends the time to intervene from 20 days to 30 days.

Information on Face of Lis Pendens

While it is customary for a deputy clerk to put a time-stamp on the lis pendens that shows the date and time of the filing of the lawsuit, it is occasionally not done or the time may be off, leading to a technical challenge to an otherwise legitimate lis pendens. This bill removes the requirement that a notice of lis pendens include the time that the action was filed, and provides that the lis pendens must contain either the date that the underlying lawsuit was filed on or the case number of the underlying action. This bill further provides that the clerk's stamp sufficiently indicates the date of filing if the lis pendens is filed on the same date as the lawsuit.⁴

Extinguishment

This bill provides that a court must control a recorded lis pendens as the court grants and dissolves injunctions.

B. SECTION DIRECTORY:

Section 1 amends s. 48.23, F.S., regarding lis pendens.

Section 2 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁴ This is the typical scenario. A lis pendens will be prepared by the plaintiff with the case style and other required information, but with the case number area blank. The deputy clerk at the circuit court filing desk will accept the lis pendens and the filing fee, write the case number in the blank, put the lis pendens into a machine that stamps the date and time on the face, and then record the lis pendens.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2009, the Civil Justice and Courts Policy Committee adopted one amendment to the bill to provide that a lis pendens is filed in the official records rather than with the clerk of the court. The clerks of the court receive and record documents in the official records in all but one county of the state. By referencing official records, the amendment simply provides more accurate terminology. The bill was then reported favorably with a committee substitute.