

By the Committee on Judiciary; and Senator Bennett

590-02982-09

20091552c1

1                   A bill to be entitled  
2           An act relating to lis pendens; amending s. 48.23,  
3           F.S.; permitting property to be sold exempt from  
4           claims asserted in an action when the lis pendens has  
5           expired or been withdrawn or discharged; requiring a  
6           notice of lis pendens to include the date of the  
7           action or the case number of the action; extending the  
8           time in which the holder of an unrecorded interest or  
9           lien may intervene in a pending action; providing for  
10          the control and discharge of a lis pendens that no  
11          longer affects the property; providing an effective  
12          date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16           Section 1. Section 48.23, Florida Statutes, is amended to  
17           read:

18           48.23 Lis pendens.—

19           (1) (a) An ~~Ne~~ action in any of the state or federal courts  
20           in this state operates as a lis pendens on any real or personal  
21           property involved therein or to be affected thereby only if  
22           ~~until~~ a notice of lis pendens ~~the commencement of the action~~ is  
23           recorded in the official records office of the clerk of the  
24           circuit court of the county where the property is located and  
25           such notice has not expired pursuant to subsection (2) or been  
26           withdrawn or discharged. ~~, which notice contains~~

27           (b)1. An action that is filed for specific performance or  
28           that is not based on a duly recorded instrument has no effect,  
29           except as between the parties to the proceeding, on the title

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30 to, or on any lien upon, the real or personal property unless a  
31 notice of lis pendens has been recorded and has not expired or  
32 been withdrawn or discharged.

33 2. Any person acquiring for value an interest in the real  
34 or personal property during the pendency of an action described  
35 in subparagraph 1., other than a party to the proceeding or the  
36 legal successor by operation of law, or personal representative,  
37 heir, or devisee of a deceased party to the proceeding, shall  
38 take such interest exempt from all claims against the property  
39 that were filed in such action by the party who failed to record  
40 a notice of lis pendens or whose notice expired or was withdrawn  
41 or discharged, and from any judgment entered in the proceeding,  
42 notwithstanding the provisions of s. 695.01, as if such person  
43 had no actual or constructive notice of the proceeding or of the  
44 claims made therein or the documents forming the causes of  
45 action against the property in the proceeding.

46 (c)1. A notice of lis pendens must contain the following:

47 a. The names of the parties.

48 b. The ~~date~~ ~~time~~ of the institution of the action or the  
49 case number of the action.

50 c. The name of the court in which it is pending.

51 d. A description of the property involved or to be  
52 affected. ~~and~~

53 e. A statement of the relief sought as to the property.

54 2. In the case of any notice of lis pendens filed on the  
55 same date as the pleading upon which the notice is based, the  
56 clerk's notation of the date of receipt on the notice shall  
57 satisfy the requirement that the notice contain the date of the  
58 institution of the action.

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59        ~~(d)(b)~~ Except for the interest of persons in possession or  
60 easements of use, the recording ~~filing for record~~ of such notice  
61 of lis pendens, provided that during the pendency of the  
62 proceeding it has not expired pursuant to subsection (2) or been  
63 withdrawn or discharged, constitutes ~~shall constitute~~ a bar to  
64 the enforcement against the property described in the said  
65 ~~notice of lis pendens~~ of all interests and liens, including, but  
66 not limited to, federal tax liens and levies, unrecorded at the  
67 time of recording the ~~filing for record~~ such notice ~~of lis~~  
68 ~~pendens~~ unless the holder of any such unrecorded interest or  
69 lien intervenes ~~shall intervene~~ in such proceedings within 30 ~~20~~  
70 days after the ~~filing and~~ recording of the said ~~notice of lis~~  
71 ~~pendens~~. If the holder of any such unrecorded interest or lien  
72 does not intervene in the proceedings and if such proceedings  
73 are prosecuted to a judicial sale of the property described in  
74 the said ~~notice of lis pendens~~, the property shall be forever  
75 discharged from all such unrecorded interests and liens. If the  
76 ~~In the event said~~ notice of lis pendens expires or is withdrawn  
77 or discharged by order of the court, the expiration, withdrawal,  
78 or discharge of the notice does same ~~shall not in any way~~ affect  
79 the validity of any unrecorded interest or lien.

80        (2) A ~~No~~ notice of lis pendens is not effectual for any  
81 purpose beyond 1 year from the commencement of the action and  
82 will expire at that time, unless the relief sought is disclosed  
83 by the pending ~~initial~~ pleading to be founded on a duly recorded  
84 instrument or on a lien claimed under part I of chapter 713  
85 against the property involved, except when the court extends the  
86 time of expiration on reasonable notice and for good cause. The  
87 court may impose such terms for the extension of time as justice

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88 requires.

89 (3) When the pending ~~initial~~ pleading does not show that  
90 the action is founded on a duly recorded instrument or on a lien  
91 claimed under part I of chapter 713 or when the action no longer  
92 affects the subject property, the court shall ~~may~~ control and  
93 discharge the recorded notice of lis pendens as the court would  
94 ~~may~~ grant and dissolve injunctions.

95 (4) This section applies to all actions now or hereafter  
96 pending in any state or federal courts in this state, but the  
97 period of time specified in subsection (2) ~~above-mentioned~~ does  
98 not include the period of pendency of any action in an appellate  
99 court.

100 Section 2. This act shall take effect July 1, 2009.