

HOUSE BILL REPORT

2SHB 1009

As Amended by Senate

Title: An act relating to notices of lis pendens.

Brief Description: Prescribing liabilities for lis pendens filings.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Appelwick and Riley).

Brief History:

Reported by House Committee on:
Judiciary, January 12, 1994, DP2S;
Passed House, February 7, 1994, 95-0;
Amended by Senate.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 11 members: Representatives Appelwick, Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; J. Kohl; Long; Morris; H. Myers; Schmidt and Scott.

Staff: Pat Shelledy (786-7149).

Background: The term "lis pendens" means "notice of the pendency of an action." The purpose of a lis pendens is to warn entities and persons that the title to certain real property is in litigation and that they are in danger of being bound by an adverse judgment if they purchase or encumber the property subsequent to the lis pendens filing. A lis pendens is a procedural mechanism to force a purchaser or encumbrancer under a subsequent conveyance to either establish the claim in the pending action or be bound by the judgment entered in the action as if the purchaser or encumbrancer was a party to the action. The lis pendens does not affect the parties' substantive rights.

One Washington appellate court has held that a lis pendens is improper when filed in anticipation of securing a personal judgment for money even though that judgment, if obtained and properly docketed, is a lien upon the property. In certain circumstances a person who is injured due to an improperly filed lis pendens can recover damages under a

common law doctrine known as slander of title. However, the elements of slander of title are restrictive, and the remedy is not readily available even if a lis pendens is filed improperly.

The lis pendens is ineffective if personal service of the complaint is not filed within 60 days of filing the lis pendens. Upon motion of an aggrieved party for good cause shown, the court may cancel the lis pendens anytime after the case has been settled or ended.

Summary of Bill: A claimant in an action not affecting title to real property against which a lis pendens is filed is liable to an aggrieved party who prevails on a motion to cancel the lis pendens, for (1) actual damages caused by filing the lis pendens, and (2) reasonable attorney fees incurred in cancelling the lis pendens.

Unless the claimant establishes a substantial justification for filing the lis pendens, a claimant is liable to an aggrieved party who prevails in defense of an underlying action in which a lis pendens is filed (1) for actual damages caused by filing the lis pendens, and (2) in the court's discretion, reasonable attorney fees and costs incurred in defending the action. This provision applies to actions not affecting title to real property and to actions affecting title to real property.

The act does not apply to lis pendens filed in connection with an action under Title 6 which concerns enforcement of judgments, Title 60, which concerns enforcement of liens, and Title 61, which concerns enforcement of mortgages, deeds of trusts, and real estate contracts. The act applies to private parties who file lis pendens and not governmental agencies.

EFFECT OF SENATE AMENDMENT(S): Certain liens having the force and effect of lis pendens will be covered by the act. Those liens include consensual commercial liens, common law liens, commercial contractual liens, or demand for performance of public office liens. Lis Pendens filed in connection with a nonconsensual common law lien will also be covered by the act.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Individuals have abused the process of filing of lis pendens and consequently have injured property owners who attempt to sell property. This bill will provide

a remedy to parties who are injured by improperly filed lis pendens and will serve as a deterrent to filing lis pendens improperly.

Testimony Against: None.

Witnesses: John Woodring and Mike Cooper, Washington Association of Realtors (pro).

VOTE ON FINAL PASSAGE:

Yeas 95; Excused 3

Excused: Representatives Ballard, Reams, Silver