

FINAL BILL REPORT

2SHB 1009

C 155 L 94
Synopsis as Enacted

Brief Description: Prescribing liabilities for lis pendens filings.

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

House Committee on Judiciary
Senate Committee on Law & Justice

Background: The term "lis pendens" means "notice of the pendency of an action." The purpose of a lis pendens is to warn persons such as potential buyers or lenders that the title to certain real property is in litigation. Purchasers and lenders may be bound by an adverse judgment arising from the litigation 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 made by the claimant 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: 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 both 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, most of 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, but not to governmental agencies. Instruments having the effect of a lis pendens that are governed by the act include certain types of liens, such as common law liens.

Votes on Final Passage:

House	95	0	
Senate	48	0	(Senate amended)
House	92	0	(House concurred)

Effective: June 9, 1994