

SENATE BILL REPORT

2SHB 1009

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 16, 1994

Brief Description: Prescribing liabilities for lis pendens filings.

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives Appelwick and Riley)

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators A. Smith, Chairman; Ludwig, Vice Chairman; Nelson, Quigley, Roach and Schow.

Staff: Dick Armstrong (786-7460)

Hearing Dates: February 16, 1994

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.

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.

There have been instances where listing agreements, earnest money agreements, or lis pendens have been filed against property, even though the underlying cause of action does not affect the title to the property. When this happens, costly delays occur to the participants of the real estate transaction.

It has been suggested that there should be statutory penalties when improper or nonmeritorious lis pendens are filed.

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 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.

Appropriation: none

Revenue: none

Fiscal Note: none requested

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

TESTIFIED: Glen Hudson, Doug Tingvall, Mike Cooper, Washington Association of Realtors (pro)