
HOUSE BILL 3022

State of Washington 61st Legislature 2010 Regular Session

By Representatives Taylor and Rodne

Read first time 01/20/10. Referred to Committee on Judiciary.

1 AN ACT Relating to clarifying substantial justification for a lis
2 pendens action; and amending RCW 4.28.328.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 4.28.328 and 1994 c 155 s 1 are each amended to read
5 as follows:

6 (1) For purposes of this section:

7 (a) "Lis pendens" means a lis pendens filed under RCW 4.28.320 or
8 4.28.325 or other instrument having the effect of clouding the title to
9 real property, however named, including consensual commercial lien,
10 common law lien, commercial contractual lien, or demand for performance
11 of public office lien, but does not include a lis pendens filed in
12 connection with an action under Title 6, 60, other than chapter 60.70
13 RCW, or 61 RCW;

14 (b) "Claimant" means a person who files a lis pendens, but does not
15 include the United States, any agency thereof, or the state of
16 Washington, any agency, political subdivision, or municipal corporation
17 thereof; and

18 (c) "Aggrieved party" means (i) a person against whom the claimant
19 asserted the cause of action in which the lis pendens was filed, but

1 does not include parties fictitiously named in the pleading; or (ii) a
2 person having an interest or a right to acquire an interest in the real
3 property against which the lis pendens was filed, provided that the
4 claimant had actual or constructive knowledge of such interest or right
5 when the lis pendens was filed.

6 (2) A claimant in an action not affecting the title to real
7 property against which the lis pendens was filed is liable to an
8 aggrieved party who prevails on a motion to cancel the lis pendens, for
9 actual damages caused by filing the lis pendens, and for reasonable
10 attorneys' fees incurred in canceling the lis pendens.

11 (3) Unless the claimant establishes a substantial justification for
12 filing the lis pendens, a claimant is liable to an aggrieved party who
13 prevails in defense of the action in which the lis pendens was filed
14 for actual damages caused by filing the lis pendens, and in the court's
15 discretion, reasonable attorneys' fees and costs incurred in defending
16 the action. Substantial justification for filing the lis pendens
17 requires proof that the claimant had a reasonable basis in fact or in
18 law for filing the lis pendens and the claimant must prove substantial
19 justification for filing the lis pendens by a preponderance of the
20 evidence.

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