SENATE BILL REPORT

SHB 1009

AS OF MARCH 24, 1993

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

Staff: Dick Armstrong (786-7460)

Hearing Dates: March 25, 1993

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. The lis pendens should contain the parties' names, the object of the action, and a description of the real property.

Statutory provisions governing the rules of civil procedure provide that the lis pendens may be filed at the time the complaint is filed or whenever a writ of attachment is issued, or thereafter.

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.

Although a private party does not have to file a lis pendens in a civil action, a variety of other statutes require certain entities to file a lis pendens in certain actions. Some examples are: Law enforcement officers who seize real property that is being used in violation of the Uniform Controlled Substances Act or the money laundering statutes must file a lis pendens when they seize the property; a person entitled to cure a default in a real estate contract must file a lis pendens if the person joins a forfeiture action to cure

the default; and, a county treasurer who is an ex officio irrigation district treasurer must file a lis pendens when commencing an action to collect delinquent assessments.

Additionally, some other statutes provide that certain notices have the same force and effect of a lis pendens.

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 any time after the case has been settled or ended.

SUMMARY:

A party who files a lis pendens or other instrument having the same force or effect in an action not affecting the title to real property against which the lis pendens or other instrument is filed is liable to a party who prevails in an action to cancel the lis pendens or other instrument for: (1) actual damages caused by filing the lis pendens, and (2) for reasonable attorneys' fees incurred in cancelling the lis pendens or other instrument.

A party who files a lis pendens or other instrument in an action affecting the title to real property against which the lis pendens or other instrument is filed is liable to a party who prevails in defense of the action for: (1) actual damages caused by filing the lis pendens or other instrument, and (2) in the court's discretion, for fees and costs incurred in defending against the action.

Appropriation: none

Revenue: none

Fiscal Note: available