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Property; Lis Pendens

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3. NRS 40.253(1) (as amended by Ch. 648 §1).
4. Id.
5. 1977 Nev. Stats. ch. 235 §1, at 418 (NRS 40.253(1), amended by Ch. 648 §1).
6. Ch. 648 §1 (amending NRS 40.253(1)).
7. Id. §1 (amending NRS 40.253(2)(b)).
8. Id. §1 (amending NRS 40.253(1)).
9. NRS 40.253(2)(a) (as amended by Ch. 648 §1).
10. NRS 40.253(3) (as amended by Ch. 648 §1).
11. Id.

PROPERTY; LIS PENDENS

Adds to NRS Chapter 14
SB 343 (Close); STATS 1979, Ch 507
(Effective May 26, 1979)

Chapter 507 provides a method of cancelling the notice of a pending action from the property records recorded in the county recorder's office. Existing law allows a party who has an action dealing with the foreclosure of a mortgage upon real property or affecting the title or possession of real property, to file a notice of the pending action in the county where the property is located.¹ The filing of this notice gives any subsequent purchaser or incumbrancer constructive notice of the pending action.² A person having constructive notice will not be protected by the law as a bona fide purchaser.³

Prior to Chapter 507, a party did not have the opportunity for a hearing to contest the filing of a pendency notice. If the notice was improperly filed, the injured party could only bring an action to remove a cloud on title and for damages for slander of title, but such proceedings could offer no immediate relief.⁴ Chapter 507 provides for a hearing to oppose a notice of the pendency of the action. The hearing must be set as soon as it is practicable and will take precedence over all other civil matters, except motions for preliminary injunctions.⁵

The party who filed the notice must be given five days notice⁶ of the hearing.⁷ He must then appear and prove by a preponderance of evidence that: (a) the action is for the foreclosure of a mortgage or affects the title or possession of real property; (b) his claim is not brought in bad faith or for an "improper motive";⁸ (c)

probable cause exists to believe that he will prevail in obtaining the relief sought; (d) he is able to perform any condition precedent to the relief sought in the action insofar as it affects the title or possession of the real property (for example, conditions precedent to specific performance of a contract for the sale of real property); and (e) if the property is transferred before the action is concluded, he will be injured.⁹

If the party filing the pendency notice fails to prove any of the requirements, the court must order the notice to be cancelled.¹⁰ If he succeeds in proving all of the requirements, the opposing party may still obtain a cancellation order by posting adequate security.¹¹ The cancellation order is filed with the county recorder and has the effect of expunging the original notice from the records.¹²

After the cancellation order has been recorded, the notice will no longer create a duty of inquiry on the party of any person dealing with the property; the records will no longer put him on constructive or actual notice of the action, any matters relating to the action, or any matters referred to in the pendency notice or cancellation order.¹³

Don H. Gallian

FOOTNOTES

1. NRS 14.010(1).
2. NRS 14.010(3).
3. Russell v. Ruffcorn, 54 Nev. 162, 172-75, 10 P.2d 632, 635-36 (1932).
4. See Comment, Does California's Statutory Lis Pendens Violate Procedural Due Process? 6 PAC. L.J. 62 (1975).
5. 1979 Nev. Stats. ch. 507 (hereinafter "Ch. 507") §1 ¶1 (adding to NRS Ch. 14).
6. See N.R.C.P. Rule 6 for computation of time in giving notice.
7. Ch. 507 §1 ¶2 (adding to NRS Ch. 14).
8. See Comment, supra note 4, at 80.
9. Ch. 507 §1 ¶2 (adding to NRS Ch. 14).
10. Id. §1 ¶3 (adding to NRS Ch. 14).
11. Id. §1 ¶4 (adding to NRS Ch. 14).
12. Id.
13. Id. §1 ¶5 (adding to NRS Ch. 14).