



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1981 | Issue 1

Article 18

1-1-1981

Civil Procedure; Hearings on Notice of Pendency of an Action

Univeristy of the Pacific, McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/nlr>



Part of the [Legislation Commons](#)

Recommended Citation

Univeristy of the Pacific, McGeorge School of Law, *Civil Procedure; Hearings on Notice of Pendency of an Action*, 1981 U. PAC. L. REV. (2019).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1981/iss1/18>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Pacific Law Journal Review of Selected Nevada Legislative by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

constitutional violation by removing the notice of claim requirement.¹³

13. Compare N.R.S. §244.245 1 with *Turner v. Staggs*, 89 Nev. 230, 240, 510 P.2d 879, 885-886 (1973).

Civil Procedure; hearings on notice of pendency of an action

N.R.S. §14.015 (amended).

SB 670 (Committee on Judiciary); STATS 1981, Ch 749

(Effective June 15, 1981)

In actions to foreclose a mortgage or to affect the title or possession of real property, a plaintiff upon filing the complaint, or a defendant seeking affirmative relief in the answer, may file notice of the pendency of the action (hereinafter referred to as *lis pendens*) with the county recorder.¹ The non-recording party may petition the court for a hearing to determine the necessity of retaining the notice of *lis pendens*.² This hearing must be scheduled as soon as is practicable.³ Prior to the enactment of Chapter 749, the party who caused notice of *lis pendens* to be recorded had to appear at the hearing upon five days notice. Chapter 749, however, extends the notice period to fifteen days.⁴

At the hearing, the party who recorded notice of the *lis pendens* must establish that (1) the underlying action is for the foreclosure of a mortgage or affects the title of the property described in the notice,⁵ (2) the action was not brought for an improper motive,⁶ (3) all conditions precedent to obtaining the relief sought can be performed by the party who caused notice to be recorded,⁷ and (4) the recording party would be injured by a transfer of an interest in the property, prior to the termination of the action.⁸ Under prior law, these matters had to be proven by a *preponderance of the evidence*.⁹ Chapter 749 requires that they be established to the *satisfaction of the court*.¹⁰ As a general matter this degree of proof is considered to be greater than proof by a pre-

1. See N.R.S. §14.010 1.

2. See BLACK'S LAW DICTIONARY 840 (5th ed. 1976).

3. See N.R.S. §14.015 1.

4. Compare *id.* §14.015 2 with STATUTES OF NEVADA 1979, c. 507, §1, at 982 (enacting N.R.S. §14.015 2).

5. See N.R.S. §14.015 2(a).

6. See *id.* §14.015 2(b).

7. See *id.* §14.015 2(c).

8. See *id.* §14.015 2(d).

9. See STATUTES OF NEVADA 1979, c. 507, §1, at 982.

10. See N.R.S. §14.015 2.

ponderance of the evidence.¹¹

Formerly, the party who recorded the notice also had to prove by a preponderance of the evidence that probable cause existed to support the belief that he or she would prevail in the underlying action and that the relief requested would affect the title or possession of the real property.¹² Chapter 749 now requires the party who caused notice to be recorded to establish to the satisfaction of the court that he or she is likely to prevail¹³ or that there is a fair chance of success on the merits¹⁴ and that he or she would suffer a greater hardship by the transfer of an interest in the property prior to the termination of the action than any hardship suffered by the non-recording party resulting from the notice of *lis pendens*.¹⁵ In addition it must be established that if the recording party prevails he or she will be entitled to relief affecting the title or possession of the real property.¹⁶

11. See generally 75 AM. JUR. *Trial* §825 (1974); Annot., 147 A.L.R. 380 (1943) (differing views on the degree of proof required to satisfy this standard).

12. See STATUTES OF NEVADA 1979, c. 507, §1, at 982.

13. See N.R.S. §14.015 3(a).

14. See *id.* §14.015 3(b).

15. See *id.*

16. See *id.*

Civil Procedure; admissibility of statements of a decedent

N.R.S. §48.— (new).

SB 357 (Committee on Judiciary); STATS 1981, Ch 220

Prior to 1979, Nevada law required corroborative evidence in order to admit into evidence conversations or transactions of a deceased person.¹ This statutory requirement was repealed in 1979.² To clarify existing law, Chapter 220 expressly indicates that the repeal of the statute relating to the admissibility of conversations or transactions of deceased persons was *not* intended to revive the common law dead man's statute.³ Moreover, with the enactment of Chapter 220, evidence will not be rendered inadmissible solely because it is evidence of transactions or conversations of a deceased person.⁴

1. See STATUTES OF NEVADA 1971, c. 402, §110.5, at 794 (amending N.R.S. §51).

2. See STATUTES OF NEVADA 1979, c. 134, §1, at 198 (repealing N.R.S. §48.064).

3. See STATUTES OF NEVADA 1981, c. 220, §2, at —. See generally, Lilly, AN INTRODUCTION TO THE LAW OF EVIDENCE §23 (1978); 81 AM. JUR. 2nd §§303-412 (1976) (dead man statutes).

4. See N.R.S. §48. —.