


WFG Informational Bulletin



To: All Florida Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: December 5, 2019
Bulletin No.: FL 2019-11
Subject: Lis Pendens Statute Revised

On June 7, 2019, Governor DeSantis signed House Bill 91 (CS/CS/HB 91) in to law. HB 91 revised Florida's lis pendens Statute - Sec. 48.23, to change the effective time period of a lis pendens.

In lawsuits such as mortgage foreclosures and construction lien foreclosures, a lis pendens is typically recorded in the Public Records in connection with the lawsuit. A recorded lis pendens does two things: (1) it provides notice that a lawsuit is pending against the property described in the lis pendens; and (2) it eliminates all interests and liens [except the interest of parties in possession and easements in use] recorded after the lis pendens unless the holder of that interest or lien intervenes in the lawsuit within 30 days after the lis pendens is recorded. If the holder of an interest or lien recorded after the lis pendens does not intervene in the lawsuit and the case proceeds to a judicial sale, the lis pendens eliminates those interests.

Prior to the revisions contained in HB 91, the lis pendens statute was unclear as to the period of time that a lis pendens was effective to bar interests and liens recorded after the lis pendens. In the case of *Ober v. Town of Lauderdale-By-The-Sea*, 41 FLW D1978 (4th DCA 2016), the 4th DCA held that a lis pendens barred interests and liens recorded after the lis pendens through the final judgment of foreclosure plus 30 days. That first *Ober* opinion was contrary to accepted practice that a lis pendens was effective through the judicial sale. The first *Ober* opinion was eventually withdrawn by the 4th DCA and was replaced with *Ober v. Town of Lauderdale-By-The-Sea*, 218 So.3d 952 (4th DCA 2017). The revised *Ober* case held that a lis pendens was effective to eliminate interests and liens recorded after the lis pendens through the date of the judicial sale. The revised *Ober* case is in line with standard foreclosure / litigation practice and the language of F.S. 48.23(1)(d) prior to the revisions contained in HB 91.

While the revised *Ober* case was a substantial improvement over the first *Ober* case, HB 91 improved the lis pendens statute even more. HB 91 revised F.S. 48.23(1)(d) to provide that a lis pendens is effective to eliminate interests and liens recorded after the lis pendens through the recording of the certificate of title in a foreclosure case. The actual language of the revised

statute is that a lis pendens “*remains in effect through the recording of any instrument transferring title to the property pursuant to the final judgment ...*”

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company’s Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.