

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES OF CIVIL
PROCEDURE**

CASE NO:

**FAST-TRACK REPORT IN RESPONSE TO
LEGISLATIVE CHANGES**

Mark Romance, Chair, Civil Procedure Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this 2009 fast-track report of the Civil Procedure Rules Committee under *Fla. R. Jud. Admin.* 2.140(f). The proposed amendments were approved by the Committee 36-0. They have been reviewed by the Executive Committee of the Board of Governors of The Florida Bar and approved by a vote of 11-0. Because this is a fast-track report, the proposed amendments have not yet been published in *The Florida Bar News* or posted on the Bar's website. The form amendments are attached in full-page legislative format (see Appendix A).

Each session, the Civil Procedure Rules Committee reviews bills passed by the Legislature to determine what changes, if any, those bills would require in the civil rules. Based on changes passed in the 2009 session — *i.e.*, SB 1552 (see Appendix B), which defines what a *lis pendens* notice must contain — the Committee recommends that changes be made to Form 1.918. The Committee also proposes the addition of a note or comment clarifying that the notice of *lis pendens* should contain either the date of the institution of the underlying action, the date of the clerk's receipt of the notice of *lis pendens*, or the case number of the

underlying action.

The Committee respectfully asks the Court to amend Florida Rule of Civil Procedure Form 1.918 as described in this report.

Respectfully submitted, _____.

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CERTIFICATE OF COMPLIANCE

I certify that this report was prepared in accordance with the font requirements of Fla. R. App. P. 9.210(a)(2).

I certify that this form was read against West's *Florida Rules of Court – State* (2008).

MADOLON HORWICH
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APPENDIX A

Changes to Form 1.918 in Legislative Format

FORM 1.918. LIS PENDENS

NOTICE OF LIS PENDENS

TO DEFENDANT(S), AND ALL OTHERS WHOM IT MAY CONCERN:

YOU ARE NOTIFIED OF THE FOLLOWING:

(a) The plaintiff has instituted~~of the institution~~ of this action ~~by the plaintiff~~ against you seeking (“to foreclose a mortgage on” or “to partition” or “to quiet title” or other type of action) ~~the following property in County, Florida;~~ on the property described below;

(b) The plaintiff(s) in this action is/are:

(1)

(2);

(c) The date of the institution of this action is

OR: the date on the clerk’s electronic receipt for the action’s filing is

OR: the case number of the action is as shown in the caption.

(d) The property that is the subject matter of this action is in County, Florida, and is described as follows:

(legal description of property)

DATED on

Attorney for
.....
.....
Address
Florida Bar No.

NOTE: This form is not to be recorded without the clerk’s case number.

Committee Notes

2009 Amendment. This form was substantially rewritten due to the amendments to section 48.23, Florida Statutes (2009). Section 48.23 provides that the notice must contain the names of all of the parties, the name of the court in which the action is instituted, a description of

the property involved or affected, a description of the relief sought as to the property, and one of the following: the date of the institution of the action, the date of the clerk's electronic receipt, or the case number. If the case number is used to satisfy the requirements of section 48.23, it should be inserted in the case caption of the notice.

APPENDIX B

SB 1552

SENATE BILL 1552

ENROLLED
2009 Legislature

CS for CS for SB 1552
20091552er

1
2 An act relating to lis pendens; amending s. 48.23,
3 F.S.; permitting property to be sold exempt from
4 claims asserted in an action when the lis pendens has
5 expired or been withdrawn or discharged; requiring a
6 notice of lis pendens to include the date of the
7 action or the case number of the action; extending the
8 time in which the holder of an unrecorded interest or
9 lien may intervene in a pending action; providing for
10 the control and discharge of a lis pendens that no
11 longer affects the property; providing an effective
12 date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Section 48.23, Florida Statutes, is amended to
17 read:

18 48.23 Lis pendens.—

19 (1)(a) ~~An~~ No action in any of the state or federal courts
20 in this state operates as a lis pendens on any real or personal
21 property involved therein or to be affected thereby only if
22 until a notice of lis pendens the commencement of the action is
23 recorded in the official records office of the clerk of the
24 circuit court of the county where the property is located and
25 such notice has not expired pursuant to subsection (2) or been
26 withdrawn or discharged, which notice contains

27 (b)1. An action that is filed for specific performance or
28 that is not based on a duly recorded instrument has no effect,
29 except as between the parties to the proceeding, on the title
30 to, or on any lien upon, the real or personal property unless a
31 notice of lis pendens has been recorded and has not expired or
32 been withdrawn or discharged.

33 2. Any person acquiring for value an interest in the real
34 or personal property during the pendency of an action described
35 in subparagraph 1., other than a party to the proceeding or the
36 legal successor by operation of law, or personal representative,
37 heir, or devisee of a deceased party to the proceeding, shall

38 take such interest exempt from all claims against the property
39 that were filed in such action by the party who failed to record
40 a notice of lis pendens or whose notice expired or was withdrawn
41 or discharged, and from any judgment entered in the proceeding,
42 notwithstanding the provisions of s. 695.01, as if such person
43 had no actual or constructive notice of the proceeding or of the
44 claims made therein or the documents forming the causes of
45 action against the property in the proceeding.

46 (c)1. A notice of lis pendens must contain the following:

47 a. The names of the parties;

48 b. The date time of the institution of the action, the date
49 of the clerk's electronic receipt, or the case number of the
50 action;

51 c. The name of the court in which it is pending;

52 d. A description of the property involved or to be
53 affected; and

54 e. A statement of the relief sought as to the property.

55 2. In the case of any notice of lis pendens filed on the
56 same date as the pleading upon which the notice is based, the
57 clerk's notation of the date of receipt on the notice shall
58 satisfy the requirement that the notice contain the date of the
59 institution of the action.

60 (d)(b) Except for the interest of persons in possession or
61 easements of use, the recording filing for record of such notice
62 of lis pendens, provided that during the pendency of the
63 proceeding it has not expired pursuant to subsection (2) or been
64 withdrawn or discharged, constitutes shall constitute a bar to
65 the enforcement against the property described in the said
66 notice of lis pendens of all interests and liens, including, but
67 not limited to, federal tax liens and levies, unrecorded at the
68 time of recording the filing for record such notice of lis
69 pendens unless the holder of any such unrecorded interest or
70 lien intervenes shall intervene in such proceedings within 30 20
71 days after the filing and recording of the said notice of lis
72 pendens. If the holder of any such unrecorded interest or lien
73 does not intervene in the proceedings and if such proceedings
74 are prosecuted to a judicial sale of the property described in
75 the said notice of lis pendens, the property shall be forever
76 discharged from all such unrecorded interests and liens. If the
77 in the event said notice of lis pendens expires or is withdrawn
78 or discharged by order of the court, the expiration, withdrawal,
79 or discharge of the notice does same shall not in any way affect
80 the validity of any unrecorded interest or lien.

81 (2) ~~A~~ ~~No~~ notice of lis pendens is not effectual for any
82 purpose beyond 1 year from the commencement of the action and
83 will expire at that time, unless the relief sought is disclosed
84 by the pending initial pleading to be founded on a duly recorded
85 instrument or on a lien claimed under part I of chapter 713
86 against the property involved, except when the court extends the
87 time of expiration on reasonable notice and for good cause. The
88 court may impose such terms for the extension of time as justice
89 requires.

90 (3) When the pending initial pleading does not show that
91 the action is founded on a duly recorded instrument or on a lien
92 claimed under part I of chapter 713 or when the action no longer
93 affects the subject property, the court shall ~~may~~ control and
94 discharge the recorded notice of lis pendens as the court would
95 ~~may~~ grant and dissolve injunctions.

96 (4) This section applies to all actions now or hereafter
97 pending in any state or federal courts in this state, but the
98 period of time specified in subsection (2) above-mentioned does
99 not include the period of pendency of any action in an appellate
100 court.

101 Section 2. This act shall take effect July 1, 2009.