CHAPTER 11

Notice of Lis Pendens

**SECTION 15‑11‑10.** Time when notice of lis pendens may be filed.

 In an action affecting the title to real property the plaintiff (a) not more than twenty days before filing the complaint or at any time afterwards or (b) whenever a warrant of attachment under Sections 15‑19‑10 to 15‑19‑560 shall be issued or at any time afterwards or a defendant when he sets up an affirmative cause of action in his answer and demands substantive relief, at the time of filing his answer or at any time afterwards if such answer be intended to affect real estate, may file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and the description of the property in that county affected thereby. If the action be for the foreclosure of a mortgage such notice must be filed twenty days before judgment and must contain the date of the mortgage, the parties thereto and the time and place of recording such mortgage.

HISTORY: 1962 Code Section 10‑501; 1952 Code Section 10‑501; 1942 Code Section 432; 1932 Code Section 432; Civ. P. ‘22 Section 388; Civ. P. ‘12 Section 182; Civ. P. ‘02 Section 153; 1870 (14) 455 Section 155; 1930 (36) 1218; 1931 (37) 241; 1937 (40) 335.

CROSS REFERENCES

Effect of notice of pendency of proceedings on spousal and third‑party property rights, under provisions dealing with equitable apportionment of marital property, see Section 20‑3‑670.

Mortgage foreclosure and judgment for sale of mortgaged premises under South Carolina Rules of Civil Procedure, see Rule 71, SCRCP.

Notice of lis pendens in action to determine adverse claims to real property when unknown parties are served by publication, see Section 15‑67‑40.

Obtaining order for partition under South Carolina Rules of Civil Procedure, see Rule 17, SCRCP.

Provisions of South Carolina Probate Code relative to notice of pendency of action for sale of real estate to pay debts of decedent, see Section 62‑3‑1308.

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Westlaw Key Number Searches: 242k8; 242k18.

Lis Pendens 8, 18.

C.J.S. Lis Pendens Sections 15, 18.

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Encyclopedias

S.C. Jur. Clerks of Court Section 10, Duties.

S.C. Jur. Lis Pendens Section 2, Governing Law.

S.C. Jur. Lis Pendens Section 3, Defined.

S.C. Jur. Lis Pendens Section 4, Purpose.

S.C. Jur. Lis Pendens Section 5, Contents of the Notice.

S.C. Jur. Lis Pendens Section 6, Place of Filing.

S.C. Jur. Lis Pendens Section 7, Time of Filing.

S.C. Jur. Lis Pendens Section 14, Mortgage Foreclosure.

S.C. Jur. Lis Pendens Section 17, Domestic Relations.

S.C. Jur. Lis Pendens Section 22, Mechanic’s Liens.

S.C. Jur. Lis Pendens Section 32, Cancellation by Operation of Law.

S.C. Jur. Mortgages Section 111, Lis Pendens.

Forms

Am. Jur. Pl. & Pr. Forms Lis Pendens Section 2 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, property law. 40 S.C. L. Rev. 205 (Autumn 1988).

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1. In general

Cited in Bush v Aldrich, 110 SC 491, 96 SE 922 (1918). Dickerson v Oliphant, 160 SC 288, 158 SE 546 (1931). Vasiliades v Vasiliades, 231 SC 366, 98 SE2d 810 (1957).

A lis pendens is permitted only when the action actually affects the title to real property. Carolina Park Associates, LLC v. Marino (S.C. 2012) 400 S.C. 1, 732 S.E.2d 876. Lis Pendens 3(1); Lis Pendens 15

Since the filing of a lis pendens is an extraordinary privilege granted by statute, strict compliance with the statutory provisions is required. Carolina Park Associates, LLC v. Marino (S.C. 2012) 400 S.C. 1, 732 S.E.2d 876. Lis Pendens 16

Since the filing of a lis pendens is an extraordinary privilege granted by statute, strict compliance with the statutory provisions is required. Pond Place Partners, Inc. v. Poole (S.C.App. 2002) 351 S.C. 1, 567 S.E.2d 881, rehearing denied, certiorari denied. Lis Pendens 16

The lis pendens mechanism is not designed to aid either side in a dispute between private parties; rather, lis pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, such as the fact of a suit involving property. Pond Place Partners, Inc. v. Poole (S.C.App. 2002) 351 S.C. 1, 567 S.E.2d 881, rehearing denied, certiorari denied. Lis Pendens 1

The purpose of a notice of pendency of an action is to inform a purchaser or encumbrancer that a particular piece of real property is subject to litigation. Shelley Const. Co., Inc. v. Sea Garden Homes, Inc. (S.C.App. 1985) 287 S.C. 24, 336 S.E.2d 488. Mechanics’ Liens 268

Consequences of failure to file notice of pendency of mechanics’ lien action are prescribed by former Code 1962 Section 45‑262 [Code 1976 Section 29‑5‑120] and not cases under the lis pendens statute, former Code 1962 Section 10‑501 [Code 1976 Section 15‑11‑10]. Multiplex Bldg. Corp., Inc. v. Lyles (S.C. 1977) 268 S.C. 577, 235 S.E.2d 133. Mechanics’ Liens 268

Applied in First Nat. Bank of Holly Hill v. Hair (S.C. 1942) 200 S.C. 36, 20 S.E.2d 219.

Where the wife of the mortgagor, having actual notice of the facts as well as constructive notice of the mortgage, by due filing of lis pendens twenty days before judgment, took a deed to the land from a prior owner on the day of foreclosure sale to plaintiffs, she was by the terms of this section [former Code 1962 Section 10‑501] bound by the judgment of foreclosure. McNair v. Alex (S.C. 1916) 105 S.C. 445, 90 S.E. 23. Lis Pendens 24(2)

The filing of a lis pendens against the property of a defendant in an ordinary action on a money demand, which in no way affects the title to real estate, is ineffective for any purpose, since this section [former Code 1962 Section 10‑501] authorizes the filing of lis pendens only when the action affects real estate. Armstrong v. Carwile (S.C. 1900) 56 S.C. 463, 35 S.E. 196. Lis Pendens 15

2. What constitutes action affecting real estate

A complaint alleging claims for damages and for an accounting, and that the plaintiff has and claims an equitable lien in certain described property by reason of the defendant having purchased such real estate with funds being held in trust for the plaintiff, and that building materials belonging to the plaintiff have gone into the improvements thereon, states a claim which affects the title to real property within the meaning of this section [former Code 1962 Section 10‑501]. Finley v. Hughes, 1952, 106 F.Supp. 355.

Circuit court properly cancelled lis pendens filed by former owner of property after former owner’s claim for constructive trust against purchaser of property at foreclosure sale was dismissed, even though former owner had claims remaining in case, where action no longer affected title to property after constructive trust claim was dismissed. Carolina Park Associates, LLC v. Marino (S.C. 2012) 400 S.C. 1, 732 S.E.2d 876. Lis Pendens 20

When no real property is implicated in an action, such as when the enforcement of a lien is against the substitute security under the “bonding out” procedure of the mechanic’s lien statute rather than against the original real property itself, a notice of pendency of action need not be filed. Pond Place Partners, Inc. v. Poole (S.C.App. 2002) 351 S.C. 1, 567 S.E.2d 881, rehearing denied, certiorari denied. Lis Pendens 15

In action by purchaser of real property for fraud and unfair trade practices, circuit court erred in cancelling notices of lis pendens on properties allegedly conveyed by defendant partnership to newly created partnership in order to avoid any judgment that purchaser of real estate might obtain against partnership which had sold real estate, even though majority of property covered by lis pendens were not connected with fraud and unfair trade practices causes of action, as action to set aside fraudulent conveyance is one “affecting title to real property”. Lebovitz v. Mudd (S.C. 1987) 293 S.C. 49, 358 S.E.2d 698.

Action to set aside fraudulent conveyance is one affecting title to real property and notices of lis pendens were properly filed against subject property. Lebovitz v. Mudd (S.C. 1987) 293 S.C. 49, 358 S.E.2d 698. Lis Pendens 15

3. Lis pendens as prerequisite to judgment in partition

This section [former Code 1962 Section 10‑501] does not make the filing of the lis pendens an indispensable prerequisite to a judgment in partition as it does for a judgment in foreclosure. Ex parte Johnson (S.C. 1928) 147 S.C. 259, 145 S.E. 113.

4. Operation and effect of notice—In general

Lis pendens notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights. Pond Place Partners, Inc. v. Poole (S.C.App. 2002) 351 S.C. 1, 567 S.E.2d 881, rehearing denied, certiorari denied. Lis Pendens 24(1)

An action affecting the title to real property allows the filing of a lis pendens by an interested party in order to protect their ownership interest in the property subject to the litigation. Pond Place Partners, Inc. v. Poole (S.C.App. 2002) 351 S.C. 1, 567 S.E.2d 881, rehearing denied, certiorari denied. Lis Pendens 15

Lis pendens filed more than 20 days before filing of complaint is invalid, and, in such case, lis pendens need not be declared ineffective under Sections 15‑11‑30 or 15‑11‑40, but is automatically invalid when complaint is not properly filed, as required by Section 15‑11‑10. South Carolina Nat. Bank v. Cook (S.C. 1987) 291 S.C. 530, 354 S.E.2d 562.

One renting property from mortgagor after lis pendens was filed in suit to foreclose, was bound by the filing of the lis pendens. Pipkin v. Fletcher (S.C. 1932) 165 S.C. 98, 162 S.E. 774. Lis Pendens 25(1.1)

Where a foreclosure is commenced and lis pendens filed, a subsequent renter of the mortgaged property is not entitled to a crop planted by him and standing on the land on the day of sale. Tittle v. Kennedy (S.C. 1905) 71 S.C. 1, 50 S.E. 544. Lis Pendens 25(2)

The effect of this section [former Code 1962 Section 10‑501] seems to be that, after the notice of lis pendens is filed, anyone who purchases the land affected by such lis pendens shall be treated as one who had notice of the lien of a mortgage. Baum v. Trantham (S.C. 1895) 45 S.C. 291, 23 S.E. 54.

Where there were two judgment liens on land, one senior and the other junior to plaintiffs’ mortgage, and execution under the junior judgment was levied on the land, and on the day following the levy the plaintiffs commenced a foreclosure, making the execution creditors parties and at the same time filed a lis pendens, and the land was afterwards sold under the execution and purchased by a third party who was thereupon made a party to the foreclosure suit, such purchaser, having been affected with notice of the lis pendens, could not, by claiming under the senior judgment, divest the lien of such mortgage. Baum v. Trantham (S.C. 1895) 45 S.C. 291, 23 S.E. 54. Lis Pendens 25(4)

4.5. —— Summons and complaint, operation and effect of notice

A lis pendens, which must be filed not more than twenty days before the filing of the complaint or at any time afterwards, is a derivative right, and its validity depends not only on the timeliness of its filing in relation to the underlying complaint, but on the validity of the complaint as well. Theisen v. Theisen (S.C. 2011) 394 S.C. 434, 716 S.E.2d 271. Lis Pendens 18

County’s notice of lis pendens was invalid and could not have provided constructive notice of any claim by county to mortgagee, in foreclosure action and subsequent sale of property, where county failed to file summons and complaint within 20 days of its filing of notice of pendency. Horry County v. Ray (S.C.App. 2009) 382 S.C. 76, 674 S.E.2d 519. Lis Pendens 18

5. —— On events occurring prior to notice, operation and effect of notice

One may not rely upon purchase or encumbrance made after filing of lis pendens. Pipkin v. Fletcher (S.C. 1932) 165 S.C. 98, 162 S.E. 774. Lis Pendens 26(1)

A purchaser whose deed is recorded before filing of a lis pendens is not affected thereby. Greenwood Loan & Guarantee Ass’n v. Childs (S.C. 1903) 67 S.C. 251, 45 S.E. 167.

Sale of land under execution levied before a lis pendens is filed in an action to foreclose a mortgage on land, gives good title to the purchaser; and he has the right as a proper party, by petition in the action, to contest the mortgage. Ex parte Mobley (S.C. 1883) 19 S.C. 337.

6. Effect of failure to file notice; judgment as notice

One who is neither a subsequent purchaser nor encumbrancer is not protected by failure to file notice of lis pendens. Vance v Wesley, 85 F 157 (1898); Wesley v Tindal, 81 F 612 (1897).

Under the terms of this section [former Code 1962 Section 10‑501] the holder of a conveyance recorded subsequently to a mortgage is bound by the foreclosure proceedings. Duke Power Co. v. Rutland, 1932, 60 F.2d 194. Vendor And Purchaser 231(17)

A judgment is notice to one acquiring possession after entry of judgment, although no notice of lis pendens was filed. Wesley v. Tindal, 1897, 81 F. 612.

Defendant, not being a party in a suit nor having actual knowledge of it, and the lis pendens not being filed until after he had purchased the property and went into possession, was not bound by the judgment in the suit. Walker v. Williams (S.C. 1948) 212 S.C. 32, 46 S.E.2d 249.

7. Purpose

The purpose of a notice of pendency of an action is to inform a purchaser or encumbrancer that a particular piece of real property is subject to litigation; generally, the filing of a lis pendens places a cloud on title which prevents the owner from freely disposing of the property before the litigation is resolved. Horry County v. Ray (S.C.App. 2009) 382 S.C. 76, 674 S.E.2d 519. Lis Pendens 12.1; Lis Pendens 22(1)

**SECTION 15‑11‑20.** Pendency as constructive notice; effect.

 From the time of filing only, the pendency of the action shall be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action. For the purposes of this section, an action shall be deemed to be pending from the time of filing such notice.

HISTORY: 1962 Code Section 10‑502; 1952 Code Section 10‑502; 1942 Code Section 432; 1932 Code Section 432; Civ. P. ‘22 Section 388; Civ. P. ‘12 Section 182; Civ. P. ‘02 Section 153; 1870 (14) 455 Section 155; 1930 (36) 1218; 1931 (37) 241; 1937 (40) 335.

CROSS REFERENCES

Provisions of South Carolina Probate Code relative to notice of pendency of action for sale of real estate to pay debts of decedent, see Section 62‑3‑1308.

LIBRARY REFERENCES

Westlaw Key Number Search: 242k22.

Lis Pendens 22.

C.J.S. Lis Pendens Section 31.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 20, Sheriff’s Sales on Execution.

S.C. Jur. Mortgages Section 108, Defendants.

S.C. Jur. Mortgages Section 111, Lis Pendens.

NOTES OF DECISIONS

In general 1

1. In general

Under South Carolina law, notice of lis pendens in government’s collection action gave purchaser of affected property constructive notice of government’s tax lien, precluding bona fide purchaser status. U.S. v. Taylor, 2003, 292 F.Supp.2d 791. Lis Pendens 22(1)

Fraudulent mortgage satisfaction was properly set aside, notwithstanding subsequent purchaser’s contention that it would be inequitable to do so, given more than five‑year delay by mortgagee in enforcing note and questionable nature of related transactions, inasmuch as subsequent purchaser acquired property after mortgagee filed notice of lis pendens in foreclosure action, and thus had at least constructive notice of litigation involving property. MI Co., Ltd. v. McLean (S.C.App. 1997) 325 S.C. 616, 482 S.E.2d 597, rehearing denied, certiorari denied. Mortgages And Deeds Of Trust 1173

Given statute providing that purchaser is charged with constructive notice of litigation if his conveyance or encumbrance is executed or recorded after notice of pendency is filed and is bound by all proceedings taken thereafter as if made party to action, that subsequent purchaser lacks actual knowledge of filing of notice of lis pendens is irrelevant, and thus perceived equities in favor of purchaser are of no moment. MI Co., Ltd. v. McLean (S.C.App. 1997) 325 S.C. 616, 482 S.E.2d 597, rehearing denied, certiorari denied. Lis Pendens 24(1); Lis Pendens 25(.5)

A master in equity had the authority to accord priority to the mortgagee of property over an equitable lien holder, even though the lien was prior in time and the mortgagee had notice of the lien holder’s lis pendens, where the lien holder had made representations to the mortgagee which misled the mortgagee, thereby inducing it to extend lines of credit which it would not have otherwise extended. Fibkins v. Fibkins (S.C.App. 1990) 303 S.C. 112, 399 S.E.2d 158. Mortgages And Deeds Of Trust 1305

Lis pendens filed more than 20 days before filing of complaint is invalid, and, in such case, lis pendens need not be declared ineffective under Sections 15‑11‑30 or 15‑11‑40, but is automatically invalid when complaint is not properly filed, as required by Section 15‑11‑10. South Carolina Nat. Bank v. Cook (S.C. 1987) 291 S.C. 530, 354 S.E.2d 562.

**SECTION 15‑11‑30.** Service required.

 Such notice shall be of no avail unless it shall be followed by the first publication of the summons or an order therefor or by the personal service thereof on a defendant within sixty days after such filing.

HISTORY: 1962 Code Section 10‑503; 1952 Code Section 10‑503; 1942 Code Section 432; 1932 Code Section 432; Civ. P. ‘22 Section 388; Civ. P. ‘12 Section 182; Civ. P. ‘02 Section 153; 1870 (14) 455 Section 155; 1930 (36) 1218; 1931 (37) 241; 1937 (40) 335.

CROSS REFERENCES

Provisions of South Carolina Probate Code relative to notice of pendency of action for sale of real estate to pay debts of decedent, see Section 62‑3‑1308.

LIBRARY REFERENCES

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Lis Pendens 22.

C.J.S. Lis Pendens Section 31.

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S.C. Jur. Lis Pendens Section 7, Time of Filing.

S.C. Jur. Lis Pendens Section 11, Requirement of Process.

S.C. Jur. Lis Pendens Section 32, Cancellation by Operation of Law.

S.C. Jur. Mortgages Section 111, Lis Pendens.

NOTES OF DECISIONS

In general 1

1. In general

Lis pendens filed more than 20 days before filing of complaint is invalid, and, in such case, lis pendens need not be declared ineffective under Sections 15‑11‑30 or 15‑11‑40, but is automatically invalid when complaint is not properly filed, as required by Section 15‑11‑10. South Carolina Nat. Bank v. Cook (S.C. 1987) 291 S.C. 530, 354 S.E.2d 562.

**SECTION 15‑11‑40.** Cancellation of notice.

 The court in which the action was commenced, in its discretion at any time after the action is settled, discontinued, or abated, as provided in Section 15‑5‑190, on application of a person aggrieved and on good cause shown and on a notice as directed or approved by the court, may order the notice authorized by this chapter to be cancelled of record by the clerk of any county in whose office the notice was filed or recorded. The cancellation must be made by an endorsement to that effect on the margin of the record which refers to the order and for which the clerk is entitled to a fee of one dollar.

 The lis pendens notice, however, may be cancelled without a court order by the person who filed the notice any time after the action has been settled, discontinued, abated, or dismissed by a court of law by the submission of a written notice of cancellation to the clerk of court of each county in which a notice was filed or recorded. The clerk may require a fee of one dollar for the effectuation of a cancellation in this manner.

HISTORY: 1962 Code Section 10‑504; 1952 Code Section 10‑504; 1942 Code Section 432; 1932 Code Section 432; Civ. P. ‘22 Section 388; Civ. P. ‘12 Section 182; Civ. P. ‘02 Section 153; 1870 (14) 455 Section 155; 1930 (36) 1218; 1931 (37) 241; 1937 (40) 335; 1972 (57) 2603; 1989 Act No. 66, Section 1.

CROSS REFERENCES

Provisions of South Carolina Probate Code relative to notice of pendency of action for sale of real estate to pay debts of decedent, see Section 62‑3‑1308.

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Westlaw Key Number Search: 242k20.

Lis Pendens 20.

C.J.S. Lis Pendens Sections 24 to 30, 42.

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S.C. Jur. Lis Pendens Section 7, Time of Filing.

S.C. Jur. Lis Pendens Section 31, Cancellation by Statute.

Forms

Am. Jur. Pl. & Pr. Forms Lis Pendens Section 40 , Introductory Comments.

South Carolina Litigation Forms and Analysis Section 1:6 , Motion to Cancel Notice.

South Carolina Litigation Forms and Analysis Section 1:7 , Order Canceling Notice.

South Carolina Litigation Forms and Analysis Section 1:8 , Notice of Cancellation.

Attorney General’s Opinions

Posting a statutory bond to release real property from a statutory lien does not give the Clerk of Court authority to cancel a lis pendens previously filed in conjunction with the same cause of action. 1974‑75 Op Atty Gen, No 4059, p 136.

NOTES OF DECISIONS

In general 1

1. In general

Lis pendens filed more than 20 days before filing of complaint is invalid, and, in such case, lis pendens need not be declared ineffective under Sections 15‑11‑30 or 15‑11‑40, but is automatically invalid when complaint is not properly filed, as required by Section 15‑11‑10. South Carolina Nat. Bank v. Cook (S.C. 1987) 291 S.C. 530, 354 S.E.2d 562.

Where the trial court improperly vacated a mechanics’ lien, the order vacating the lis pendens was also improper. Sea Pines Co. v. Kiawah Island Co., Inc. (S.C. 1977) 268 S.C. 153, 232 S.E.2d 501.

**SECTION 15‑11‑50.** Limitation of effect of notice; refiling.

 When the summons is published or served as above provided the notice of the pendency of the action shall constitute notice for only five years from the date of the filing of such notice, and, in order to provide constructive notice to a purchaser or encumbrancer of the property affected thereby after such five‑year period or any such period after a refiling, the notice shall be refiled within five years from the date of filing in the first instance and within five years from the date of any such refiling. In the event any such notice be refiled it shall be entered in the book provided therefor as required for the original entry, and the clerk shall note upon the record of the filing that it is a refiling of such notice and shall also note thereupon the date of the first entry and the book and page at which such notice is filed.

HISTORY: 1962 Code Section 10‑505; 1952 Code Section 10‑505; 1942 Code Section 432; 1932 Code Section 432; Civ. P. ‘22 Section 388; Civ. P. ‘12 Section 182; Civ. P. ‘02 Section 153; 1870 (14) 455 Section 155; 1930 (36) 1218; 1931 (37) 241; 1937 (40) 335.

CROSS REFERENCES

Provisions of South Carolina Probate Code relative to notice of pendency of action for sale of real estate to pay debts of decedent, see Section 62‑3‑1308.

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Lis Pendens 22.

C.J.S. Lis Pendens Section 31.

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S.C. Jur. Lis Pendens Section 2, Governing Law.

S.C. Jur. Lis Pendens Section 9, Refiling the Notice.

S.C. Jur. Lis Pendens Section 32, Cancellation by Operation of Law.

S.C. Jur. Mortgages Section 111, Lis Pendens.