

## **NOTABLE CHANGES TO THE TREATMENT OF LIS PENDENS IN REAL ESTATE LITIGATION IN FLORIDA**

A recent amendment to the Florida lis pendens statute, Section 48.23, Florida Statutes, modified the statute as of July 1, 2009. As set forth below, the amendment addresses: (1) the effect of unrecorded, expired or withdrawn lis pendens, (2) the information needed to file a valid lis pendens, (3) actions for specific performance based on unrecorded instruments, (4) the amount of time afforded to holders of unrecorded interests, and (5) the discharge of irrelevant lis pendens.

### **(1) Effect of Unrecorded, Expired or Withdrawn Lis Pendens**

A third party acquiring an interest in the property during a pending legal action may now take such interest “exempt from all claims against the property and the judgment of the subject proceeding” if the notice of lis pendens has not been properly recorded, or if a recorded notice of lis pendens has expired, or been withdrawn or discharged.

### **(2) Necessary Information**

The amendment clarifies what information a notice of lis pendens must contain: (i) the name of the parties, (ii) the date of the action, the date of the county clerk’s electronic receipt, or the case number of the action (a change from previously requiring the time an action was filed), (iii) the name of the court in which the action is currently pending, (iv) a description of the property involved or to be affected, and (v) a statement of the relief sought as to the property. It also provides that in the case where a notice of lis pendens is filed on the same date as the pleading, the clerk’s notation of the date of receipt shall satisfy the requirement.

### **(3) Specific Performance**

An action for specific performance based on an unrecorded notice of lis pendens, or a recorded but expired, withdrawn or discharged notice of lis pendens, now shall have no effect on the title of the property and only the parties to such action are subject to being forced to convey the property.

### **(4) Holders of Unrecorded Interests may Intervene for up to 30 days**

Prior to the amendment, a party with an unrecorded interest was permitted 20 days to intervene in an action. The amendment now extends this period from 20 days to 30 days.

### **(5) Discharge of Irrelevant Lis Pendens**

It is now mandatory for the court, when the pleading does not show that the action is founded on a duly recorded instrument or when the action no longer affects the subject property, to control and discharge the lis pendens in the same manner as the court would grant and dissolve injunctions.