

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

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To amend An Act To establish a code of law for the District of Columbia to clarify the types of cases and proceedings with respect to which a notice of pendency of action may be filed, to authorize the court to order cancellation of a notice of pendency of action prior to the entry of judgment in the underlying action or proceeding, to clarify that the filing party has the duty to cancel the notice, to authorize the Mayor to cancel a notice of pendency of action one year after the underlying action or proceeding is no longer pending, and to authorize the Mayor to impose a civil fine on the party failing its duty to cancel a notice of pendency.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Lis Pendens Amendment Act of 2010”.

Sec. 2. Section 556a of An Act To establish a code of law for the District of Columbia, effective June 24, 2000 (D.C. Law 13-129; D.C. Official Code § 42-1207), is amended as follows:

Amend
§ 42-1207

(a) Subsection (a) is amended by striking the phrase “affecting the title to or asserting a mortgage, lien, security interest, or other interest” and inserting the phrase “affecting the title to or tenancy interest in, or asserting a mortgage, lien, security interest, or other ownership interest” in its place.

(b) Subsection (b) is amended by striking the phrase “this section shall be” and inserting the phrase “this section shall be effective only if the underlying action or proceeding directly affects the title to or tenancy interest in, or asserts a mortgage, lien, security interest, right of first offer, right of first refusal, or other ownership interest in real property situated in the District of Columbia, and the notice is” in its place.

(c) Subsection (d) is amended as follows:

(1) Designate the lead-in language as paragraph (1).

(2) Designate existing paragraphs (1), (2), and (3) as subparagraphs (A), (B), and

(C).

(3) The lead-in language of the newly designated paragraph (1) is amended by

striking the phrase “the prevailing party shall not” and inserting the phrase “neither party shall” in its place.

(4) A new paragraph (2) is added to read as follows:

“(2) The party who filed the notice of pendency shall file the judgment ordering the cancellation and release of the notice with the Recorder of Deeds within 30 days of the occurrence of the applicable circumstances set forth in paragraph (1)(A), (B), or (C) of this subsection.”.

(d) Subsection (e) is amended by striking the phrase “prevailing party” and inserting the phrase “party who filed the notice of pendency” in its place.

(e) New subsections (e-1), (e-2), and (e-3) are added to read as follows:

“(e-1) The party who filed the notice of pendency shall have the duty to cancel the notice by filing a release with the Recorder of Deeds if the underlying action or proceeding has been dismissed or terminated without entry of a judgment, and the filing of the release is not required under subsection (e) of this section. The release shall be filed within 30 days of the date the underlying action or proceeding was dismissed or terminated or of the applicable time period set forth in subsection (d)(1)(A),(B), or (C) of this section.

“(e-2) The Mayor shall have the authority to file with the Recorder of Deeds a release of a notice of pendency if a cancellation or release of that notice has not been filed as required by subsection (d), (e), or (e-1) of this section and one year has elapsed since the date the cancellation or release should have been filed under subsection (d), (e), or (e-1) of this section.

“(e-3)(1) Failure to cancel the notice in accordance with subsection (d), (e), or (e-1) of this section shall result in a civil fine of up to \$500.

“(2) To implement this subsection, the Mayor shall establish a schedule of fines pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) (“Civil Infractions Act”). Adjudication of any infraction shall be pursuant to the Civil Infractions Act.”.

(f) New subsections (g), (h), (i), (j), and (k) are added to read as follows:

“(g) A person with an ownership interest in real property upon which a notice of pendency of action has been filed under this section may:

“(1) If the action or proceeding underlying the notice is pending in either state or federal court in the District of Columbia, file a motion to cancel the notice with the court in which the underlying action or proceeding is pending or, if the action is on appeal, in the court in which the action was originally brought; or

“(2) If the action or proceeding underlying the notice is not pending in a court of the District of Columbia, bring an action in the Superior Court of the District of Columbia to cancel the notice.

“(h) A court in which a motion is filed or an action is brought under subsection (g) of this section may issue an order canceling the notice of pendency of action prior to the entry of judgment in the underlying action or proceeding if the court finds any one of the following:

“(1) The notice does not conform to the requirements of subsection (b) of this section;

“(2)(A) The moving party will suffer an irreparable injury if the notice is not cancelled;

“(B) The moving party has demonstrated a substantial likelihood of success on the merits in the underlying action or proceeding;

“(C) A balancing of the potential harms favors the moving party; and

“(D) The public interest favors cancelling the notice; or

“(3) The underlying action or proceeding has not been prosecuted in good faith, with all reasonable diligence, and without unnecessary delay.

“(i) The provisions of the Lis Pendens Amendment Act of 2010, passed on 2nd reading on March 16, 2010 (Enrolled version of Bill 18-91) (“Lis Pendens Act”), shall apply to any notice of pendency recorded before the effective date of the Lis Pendens Act.

“(j) The provisions of subsections (a) and (b) of this section shall not be construed to apply where the title to or interest in the real property affected by the notice is not directly at issue in the underlying action or proceeding.

“(k) For the purposes of this section, the term “tenancy interest” means the rights of a tenant or tenants as set forth under the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code § 42-3401.01 *et seq.*), regarding the:

“(1) Legitimacy of a conversion of rental housing to condominium or cooperative housing; or

“(2) Purchase of rental housing.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia