

## **CHAPTER 28-05 LIS PENDENS**

### **28-05-01. Civil action - How commenced.**

Superseded by N.D.R.Civ.P., Rule 3.

### **28-05-02. Requisites of summons in actions in the district court.**

Superseded by N.D.R.Civ.P., Rule 4.

### **28-05-03. Form of civil summons in district court.**

Superseded by N.D.R.Civ.P., Rule 4.

### **28-05-04. Summons and procedure where complaint not served with summons.**

Superseded by N.D.R.Civ.P., Rules 4, 12.

### **28-05-05. Action deemed discontinued if complaint not served with summons and not filed within thirty days.**

Superseded by N.D.R.Civ.P., Rule 4.

### **28-05-06. Notice of no personal claim.**

Repealed by omission from this code.

### **28-05-07. Lis pendens - Effect.**

In a civil or criminal action in a court affecting the title to real property, the plaintiff, at the time of filing the complaint or criminal information or indictment or at any time afterwards, or the defendant, when the defendant sets up in the defendant's answer an affirmative claim for relief affecting the title to real property and demands substantive relief, at the time of filing the defendant's answer or at any time afterwards, may file for record with the recorder of each county in which the real property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property affected. From the time of filing only shall the pendency of the action 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 is deemed a subsequent purchaser or encumbrancer with notice and is bound by all proceedings taken after the filing of such notice to the same extent as if that person were a party to the action. For the purpose of this section, an action is deemed to be pending from the time of filing such notice, but the notice in a civil action is of no avail unless it is followed by the first publication of the summons, or by the personal service thereof on a defendant, within sixty days after such filing.

#### **28-05-07.1. Lis pendens - Notice - Limitation of ten years.**

On and after January 1, 1958, no lis pendens now of record or hereafter filed is notice, either actual or constructive, of the pendency of any action or of any of the matters referred to in the court files and records pertaining to the action noticed by such lis pendens, after such lis pendens has been of record for ten years unless a new notice of lis pendens in the same action is recorded within said ten years. The effect of any lis pendens which has been of record for ten years upon the effective date of this section may be preserved by the recording of a new notice of lis pendens in the same action on or before December 31, 1957. Nothing contained in this section increases the effect or lengthens the term for which a lis pendens is notice under any existing law nor create a right to renew the operation of a lis pendens already barred by any existing law.

### **28-05-08. Cancellation of lis pendens.**

The court in which the action was commenced, at any time, on application of any person aggrieved and on good cause shown and on such notice as directed or approved by the court, may order the notice authorized by section 28-05-07 to be canceled of record in whole or in part

by the recorder of any county in whose office the same may have been filed for record, and such cancellation must be made by an endorsement to that effect on the margin of the record which shall refer to the order. Such cancellation, in like manner, may be made by the recorder upon a written request, directing such cancellation, signed by the party or the attorney of the party who caused such notice to be filed. Such notice is also canceled by the entry of a final judgment in the action if no appeal has been taken from such judgment within the time provided by law.

**28-05-09. When lis pendens not required.**

A notice of the pendency of an action in a district court is not required if the action is for the foreclosure of a mortgage.

**28-05-10. When civil action deemed pending.**

A civil action in a district court is deemed to be pending from the time of its commencement until its final determination upon appeal or until the time for appeal has passed, unless the judgment is sooner satisfied.

**28-05-11. Filing of summons and pleadings - Time for - Order requiring - Costs on order for.**

Superseded by N.D.R.Civ.P., Rule 5.