

LEGISLATIVE BILL 90

Approved by the Governor February 11, 1971

Introduced by Roland A. Luedtke, 28th District

AN ACT to amend section 25-531, Revised Statutes Supplement, 1969, relating to civil procedure; to revise the filing fees and method of cancellation of lis pendens; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 25-531, Revised Statutes Supplement, 1969, be amended to read as follows:

25-531. When the summons has been served or publication made, the action is pending so as to charge third persons with notice of pendency, and while pending no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title; provided, in all actions brought to affect the title to real property, the plaintiff may either at the time of filing his petition or afterwards, file, or in case any defendant sets up an affirmative cause of action, and demands relief which shall affect the title to real estate, he may, at the time of filing such answer, or at any time afterwards, file with the clerk or register of deeds of each county in which the said real estate thus to be affected, or any part thereof, may be situated, a notice of the pendency of such action, containing the names of the parties, the object of the action, and a description of the property in such county sought to be affected thereby. If the action be for foreclosure of a mortgage, such notice must contain the date of the mortgage, the parties thereto, and the time and place of recording the same. The clerk or register of deeds of such county shall record the notice thus filed and enter the same upon the numerical index of all lands, any part of which is included in the description in said notice, for which he shall be entitled to receive ~~the sum of one dollar and fifty cents~~ filing fees in accordance with sections 33-109 and 33-112, to be paid by the person filing such notice, and which shall be taxed as part of the costs in said action. From the time of filing such notice the pendency of such action shall be constructive notice to any purchaser or encumbrancer to be affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be

deemed to be a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken in said action after the filing of such notice to the same extent as if he were made a party to the action. The court in which such action was commenced or any judge thereof may at any time thereafter on the application of any person aggrieved, and on good cause shown, and on such notice as the court or judge may determine, order said notice to be canceled by the clerk or register of deeds of any county in which said notice may have been filed or recorded by filing a notice of release. ~~Such cancellation by the order of the court or judge thereof shall be made by the endorsement of the clerk of the court in the county in which the action was begun, on the margin of the record, that said notice is released by reason of the order of the court or judge. Such entry shall be attested by the county clerk or register of deeds.~~ In actions where such notice may be filed in a county or counties, other than the county in which the action may be pending, the county clerk or the register of deeds of the county in which the action was begun may cancel such notice by executing a written release under his hand and seal by reason of the said order of the court or judge, and forward such release by mail to the county clerk or register of deeds of the county in which said notice has been filed or recorded, and which certificate such county clerk or register of deeds shall record in the records of his office, ~~and note on the margin of the records of such notice, the release of the same.~~ At any time after such notice of pendency shall have been recorded, the party on whose behalf the same was filed or his attorney of record may cause said notice to be canceled in the office of the county clerk or register of deeds of any county in which said notice may have been filed or recorded. Such cancellation may be made ~~by endorsement on the margin of the record or~~ by written release in the same manner as such cancellations are entered on order of the court. For the service herein required the county clerk or register of deeds shall be entitled to charge and receive ~~one dollar and fifty cents~~ fees in accordance with sections 33-109 and 33-112, to be paid by the party causing the service to be performed.

Sec. 2. That original section 25-531, Revised Statutes Supplement, 1969, is repealed.