**RULE 105. Actions Concerning Real Estate**

(a) **Complete Adjudication of Rights.** An action may be brought for the purpose of obtaining a complete adjudication of the rights of all parties thereto, with respect to any real property and for damages, if any, for the withholding of possession. The court in its decree shall grant full and adequate relief so as to completely determine the controversy and enforce the rights of the parties. The court may at any time after the entry of the decree make such additional orders as may be required in aid of such decree.

(b) **Record Interest; Actual Possession Requires Occupant Be Party.** No person claiming any interest under or through a person named as a defendant need be made a party unless his interest is shown of record in the office of the recorder of the county where the real property is situated, and the decree shall be as conclusive against him as if he had been made a party; provided, however, if such action be for the recovery of actual possession of the property, the party in actual possession shall be made a party.

(c) **Disclaimer Saves Costs.** If any defendant in such action disclaims in his answer any interest in the property or allows judgment to be taken against him without answer, the plaintiff shall not recover costs against him, unless the court shall otherwise direct, provided that this section shall not apply to a defendant primarily liable on any indebtedness sought to be foreclosed or established as a lien.

(d) **Execution of Quitclaim Deed Saves Costs.** If a party, 21 days or more before bringing an action for obtaining an adjudication of the rights of another person with respect to any real property, shall request of such person the execution of a quitclaim deed to such property and shall also tender to such person $20.00 to cover the expense of the execution and delivery of a deed and if such person shall refuse or neglect to execute and deliver such deed, the filing by such person of a disclaimer shall not avoid the imposition upon such person of the costs in the action afterwards brought.

(e) **Set-off for Improvements.** Where a party or those under whom he claims, holding under color of title adversely to the claims of another party, shall in good faith have made permanent improvements upon real property (other than mining property) the value of such improvements shall be allowed as a set-off or as a counterclaim in favor of such party, in the event that judgment is entered against such party for possession or for damages for withholding of possession.

(f) **Lis Pendens.**

(1) **Filing and Notice.** A notice of lis pendens may be recorded as provided by statute.

(2) **Determination of Effect on Real Property.** Any interested person may petition the court in the action identified in the notice of lis pendens for a determination that a judgment on the issues raised by the pleadings in the pending action will not affect all, or a designated part, of the real property described in the notice of lis pendens, or a specifically described interest therein. After a hearing on such petition, the court shall make findings of fact and enter an order setting forth the description of the property as contained in the recorded notice of lis pendens and the description of the portion thereof or the interest therein, if any, the title to which will not be affected by judgment on the issues then pending in the action. Such order shall be a final judgment as to the matters set forth therein and if the order includes the determination required by Rule 54(b) as to its finality apart from remaining issues, it shall be appealable only as a separate judgment of that date.

(3) **Disclaimer.** Nothing in this Rule 105(f) shall be construed so as to preclude any party litigant from disclaiming an interest in all or any part of the real property affected by such notice of lis pendens, by filing with the court an instrument so indicating, containing a reference to the notice of lis pendens by its recording data sufficient to locate it in the records of the clerk and recorder. The filing of such instrument with the court then having jurisdiction shall bar any further claims of said party to such real property in said action.

(4) Repealed, effective April 1, 1993.

(g) **Description of Real Property.** In any proceeding for the recovery of real property or an interest therein, such property shall be designated by legal description.

**History:**

Source: f1 amended, f4 repealed, and committee comment added and effective April 1, 1993; committee comment approved for publication March 17, 1994, effective July 1, 1994; d amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b.

**Note:**

**Committee Comment**

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The previous provisions of Rule 105(f)(1) and (4) have been superseded by the passage of House Bill 92-1038, now C.R.S. §38-35-110 (1992). The statute sets out the circumstances under which a lis pendens may be recorded, states the legal effect of the recording as a matter of substantive law, and provides for the release of the effect of a lis pendens in certain circumstances. The statute clarifies certain issues that had arisen in interpreting the former rule. Subsections (2) and (3) have been retained, as they provide procedures for the removal of the effect of a lis pendens during the course of litigation, an area of concern which is not addressed by the statute, and which is strictly procedural in nature.

**Case Note:**

**Annotation**

I. General Consideration.

Law reviews. For article, "Must Colorado Real Property Installment Sale Contracts Be Foreclosed as Mortgages?", see 9 Dicta 320 (1932). For note, "Vendor's Remedies Under Colorado Executory Land Contracts", see 22 Rocky Mt. L. Rev. 296 (1950). For article, "A Decade of Colorado Law: Conflict of Laws, Security Contracts and Equity", see 23 Rocky Mt. L. Rev. 247 (1951). For article, "Actions Concerning Real Estate Including Service of Process: Rule 105 and Rule 4 ", see 23 Rocky Mt. L. Rev. 614 (1951). For article, "Enforcement of Security Interests in Colorado", see 25 Rocky Mt. L. Rev. 1 (1952). For article, "Standard Pleading Samples to Be Used in Quiet Title Litigation", see 30 Dicta 39 (1953). For article, "Attorneys, Courts, Equity", see 31 Dicta 477 (1954). For article, "Property Law", see 32 Dicta 420 (1955). For article, "One Year Review of Civil Procedure", see 34 Dicta 69 (1957). For article, "One Year Review of Civil Procedure and Appeals", see 37 Dicta 21 (1960). For article, "One Year Review of Property", see 37 Dicta 89 (1960). For note, "Holdover Tenants in Colorado", see 34 Rocky Mt. L. Rev. 320 (1962). For article, "Land Description Problems", see 35 U. Colo. L. Rev. 12 (1962). For article, "Survey of Title Irregularities, Curative Statutes and Title Standards in Colorado", see 35 U. Colo. L. Rev. 21 (1962). For article, "Court Proceedings Relating to Real Estate Titles", see 35 U. Colo. L. Rev. 65 (1962). For article, "Winning the Rezoning", see 11 Colo. Law. 634 (1982). For article, "Foreclosure by Private Trustee: Now Is the Time for Colorado", see 65 Den. U. L. Rev. 41 (1988).

Purpose of this rule is to provide for a complete adjudication of the rights of all parties so that the controversy may be ended. *Maitland v. Bd. of County Comm'rs*, 701 P.2d 617 (Colo. App. 1984).

It is clear from the language of this rule that a C.R.C.P. 105 proceeding should completely adjudicate the rights of all parties to the action claiming interests in the property. Even if a counterclaim is not pled, or an issue is not raised in the pleadings but is apparent from the evidence, the court should reach the issue to give full relief. *Keith v. Kinney*, 961 P.2d 516 (Colo. App. 1997).

This rule does not change the substantive law, which is firmly established in all actions regarding possession of real property. *Fastenau v. Engel*, 129 Colo. 440, 270 P.2d 1019 (1954); *Martini v. Smith*, 42 P.3d 629 (Colo. 2002).

This rule was not intended to permit courts to quiet title in defaulting defendants. *Osborne v. Holford*, 40 Colo. App. 365, 575 P.2d 866 (1978).

Substance and not form determines the nature of an action relating to real estate, since the adoption of section (a). *Vogt v. Hansen*, 123 Colo. 105, 225 P.2d 1040 (1950).

Whether or not an action was one for possession of land depends on the fact of possession, and not on the form of the action. *Vogt v. Hansen*, 123 Colo. 105, 225 P.2d 1040 (1950).

Plaintiffs must rely on the strength of their own title in suits to quiet title, and not on the weakness or supposed weakness of their adversaries. *Fastenau v. Engel*, 129 Colo. 440, 270 P.2d 1019 (1954); *Morrissey v. Achziger*, 147 Colo. 510, 364 P.2d 187 (1961); *Sch. Dist. No. Six v. Russell*, 156 Colo. 75, 396 P.2d 929 (1964).

A plaintiff, in an action to quiet title to lands, must rely on the strength of his own title thereto; and when it affirmatively appears that such plaintiff's rights have terminated, he is in no position to question the legality of the title claimed by others. *Sch. Dist. No. Six v. Russell*, 156 Colo. 75, 396 P.2d 929 (1964).

Plaintiff in an action to quiet title must show title in himself. *Buell v. Redding Miller, Inc.*, 163 Colo. 286, 430 P.2d 471 (1967).

No necessity for either party to show possession. In an action brought for the purpose of obtaining a complete adjudication of the rights of all parties thereto with respect to real property it is not necessary for the plaintiff to allege and prove that he had possession of the real estate in question. Possession of the property in controversy in either party is wholly immaterial under this rule. *Siler v. Inv. Sec. Co.*, 125 Colo. 438, 244 P.2d 877 (1952).

In actions brought under this rule, possession is not essential to maintain or defend such an action. An adjudication of the rights of the parties, whether of ownership or possession, may be made by the court. *Lamberson v. Thomas*, 146 Colo. 539, 362 P.2d 180 (1961).

Plaintiff does not have to prove possession of the property involved in order to prevail. *Bd. of County Comm'rs v. Blanning*, 29 Colo. App. 61, 479 P.2d 404 (1970).

When party in possession must be joined. Section (b) of this rule requires that a party in possession must be joined if the plaintiff seeks to recover actual possession of the subject property. *Ginsberg v. Stanley Aviation Corp., 193 Colo. 454, 568 P.2d 35 (1977).*

If the subject property is a public road that has been used as such, a disclaimer filed under the provisions of this rule by the county in control of the road cannot operate to vacate the road. Rather, the county must follow the mandates of the vacation statute. *Martini v. Smith*, 42 P.3d 629 (Colo. 2002).

A plaintiff not in possession must show superior title. Under this rule a plaintiff who is not in possession of real estate cannot challenge the title of a defendant in possession thereof without establishing in himself a title superior to that under which defendant occupies the land. Likewise, a defendant in an action to quiet title may effectually resist a decree against himself by showing simply that the plaintiff is without title, since if the plaintiff has no title he cannot complain that someone else, also without title, asserts an interest in the land. *Fastenau v. Engel*, 129 Colo. 440, 270 P.2d 1019 (1954).

In a case where defendant is in possession, plaintiff must rely on the strength of his own title, not upon the weakness of defendant's title in order to recover. *Bd. of County Comm'rs v. Blanning*, 29 Colo. App. 61, 479 P.2d 404 (1970).

Rights of parties considered in filing of complaint. In an action to quiet title the pertinent date fixing the rights of the parties is the date upon which the complaint is filed. No muniment of title acquired thereafter is admissible in evidence and a plaintiff cannot bolster a claim to title by acquisition of title papers subsequent to the institution of an action, unless, by supplemental pleadings, issues are framed based upon the subsequently acquired instrument. *Fastenau v. Engel*, 129 Colo. 440, 270 P.2d 1019 (1954).

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Ejectment cannot be supported by a title acquired after action commenced nor can a defective title be aided by conveyances made pending suit. *Fastenau v. Engel*, 129 Colo. 440, 270 P.2d 1019 (1954).

Burden of proof. Monetary reparation cannot be based upon mere speculation, but on the other hand such need not be proven with mathematical certainty. It is sufficient if the plaintiff establishes by a preponderance of the evidence that he has in fact suffered damage or that his rights have been infringed and that his evidence in this regard provides a reasonable basis for a computation of the damage so sustained. Difficulty in proof of damages does not in and of itself destroy the right of recovery. *Riggs v. McMurtry*, 157 Colo. 33, 400 P.2d 916 (1965).

Plaintiff's burden of proof was to establish title to the property in question by the presentation of competent evidence. The evidence presented by plaintiff was primarily in the form of a stipulated set of facts establishing the chain of title. Under these circumstances, the trial court correctly concluded that plaintiff had established a prima facie case establishing his right to ownership of the property in question. Plaintiff was entitled to relief under this section, unless defendant could come forward with evidence to rebut plaintiff's title to the property. *Bd. of County Comm'rs v. Blanning*, 29 Colo. App. 61, 479 P.2d 404 (1970).

Courts will not invoke equitable defenses to destroy legal rights where statutes of limitations are applicable. *Jacobs v. Perry*, 135 Colo. 550, 313 P.2d 1008 (1957).

The defense of laches is not available in a quiet title action. *Jacobs v. Perry*, 135 Colo. 550, 313 P.2d 1008 (1957).

Where defendant acquired a defective treasurer's deed in 1956 to the property in question, but never made use of, nor improved the property in any manner during the intervening period of time, nor expended any sums of money on it, delay, if any, has not worked to defendant's detriment in any manner, and hence dependant is not in a position to complain of delay in the bringing of this action. *Bd. of County Comm'rs v. Blanning*, 29 Colo. App. 61, 479 P.2d 404 (1970).

Effect of failure to raise issue of damages in quiet title action. Under this rule providing for a complete adjudication of rights of the parties litigant, together with damages, if any, it was essential that any damage claims be asserted in the quiet title action and upon failure to do so, damages could not be an issue in a condemnation action. *Dillinger v. North Sterling Irrigation Dist.*, 135 Colo. 95, 308 P.2d 606 (1957).

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When evidence should be submitted to jury. In an action for the adjudication of the right to possession of real estate and for damages for alleged wrongful trespass brought under this rule, it was held that, where there are a number of fact issues and the evidence is in conflict, the evidence should be submitted to the jury for determination. *Klipp v. Grusing*, 119 Colo. 111, 200 P.2d 917 (1948).

Finding supported by evidence upheld on review. The controverted issue as to the nature of gypsiferous deposits was an issue of fact and there being competent evidence to support the trial court's finding that this is a placer deposit, its determination of the matter must be upheld on review. *Gypsum Aggregates Corp. v. Lionelle*, 170 Colo. 282, 460 P.2d 780 (1969).

Applied in *Ginsberg v. Stanley Aviation Corp.*, 37 Colo. App. 240, 551 P.2d 1086 (1975); *Mohler v. Buena Vista Bank & Trust Co.*, 42 Colo. App. 4, 588 P.2d 894 (1978); *Atchison, T & S.F. Ry. v. North Colo. Springs Land & Imp. Co.*, 659 P.2d 702 (Colo. App. 1982).

II. Scope of Relief.

The manifest intent of section (a) of this rule is to provide "a complete adjudication of the rights of all parties". *Hopkins v. Bd. of County Comm'rs*, 193 Colo. 230, 564 P.2d 415 (1977).

This rule provides for a complete adjudication of all the rights of the parties in interest. *Merth v. Hobart*, 129 Colo. 546, 272 P.2d 273 (1954).

This rule has reference to a judgment finally determining the rights of all parties. *Broadway Roofing & Supply, Inc. v. District Court*, 140 Colo. 154, 342 P.2d 1022 (1959).

Where neither party has satisfactorily established title, equity and this rule direct that a complete adjudication of right be made. *Hanson v. Dilley*, 160 Colo. 371, 418 P.2d 38 (1966).

Equitable relief for improvements. Where the powers of the court were invoked to settle a boundary dispute and the rights of the parties with respect to improvements mistakenly built upon the land, there being no bad faith on the part of any of the parties, it was the duty of the court to grant such equitable relief as the situation required. *Pull v. Barnes*, 142 Colo. 272, 350 P.2d 828 (1960).

Where an adjoining owner had in good faith erected improvements on adjoining land, believing it to be his own, he should be granted the right to remove same if feasible and if not, then given an equitable lien on the

property for the value thereof. *Pull v. Barnes*, 142 Colo. 272, 350 P.2d 828 (1960).

Courts will not enforce racial restrictive covenants. The trial court's refusal to recognize the vested interest in defendant and to enforce forfeiture of the property for failure to comply with a racial restrictive covenant did not deprive defendant of property without just compensation and without due process of law. Courts will not enforce such covenants and an action for damages will not lie for violations thereof. *Capitol Fed. Sav. & Loan Ass'n v. Smith*, 136 Colo. 265, 316 P.2d 252 (1957).

Removal of restrictive covenants. Sitting as a court of equity the trial court has the power to remove or cancel restrictive covenants as clouds on the title. Such power may be exercised when it is shown that the restrictive covenants no longer serve the purpose for which they were imposed and are no longer beneficial to those claiming under them. *Zavislak v. Shipman*, 147 Colo. 184, 362 P.2d 1053 (1961); *Cole v. Colo. Springs Co.*, 152 Colo. 162, 381 P.2d 13 (1963).

Documents that reasonably designate land burdened by easements were not, as a matter of law, invalid because of vagueness. If, on remand, the easements are not determined to be otherwise unenforceable or invalid, their location will need to be fixed by the agreement of the parties or, if necessary, by the court. *Stevens v. Mannix*, 77 P.3d 931 (Colo. App. 2003).

Due-on-sale clause is not unreasonable restraint on alienation and does not require a case-by-case factual determination by trial courts whenever an effort is made to enforce a due-on-sale clause. *Bakker v. Empire Sav., Bldg. & Loan Ass'n*, 634 P.2d 1021 (Colo. App. 1981).

Enforcement of restrictions in lease. The law gives the lessor the right to impose restrictions in the lease on the right to assign or sublet the leased premises, and these restrictions may be enforced by forfeiture of the lease and reentry. *Union Oil Co. v. Lindauer*, 131 Colo. 138, 280 P.2d 444 (1955).

An action to terminate a lease of real property may be instituted under this rule. *Union Oil Co. v. Lindauer*, 131 Colo. 138, 280 P.2d 444 (1955).

Determination of adverse possession. In making a determination of the boundaries of the property to which the defendants have acquired title by actual occupancy and adverse possession, and quieting defendants' title thereto, the trial court is to determine the land necessarily appurtenant to the cabin, taking into consideration the location and nature of the property, and the uses to which the property lends itself, the uses made of the property by the defendants, and the evidence of visible occupation of the property by

the defendants which would give notice of their exclusive and adverse claim to the owner and the public. *Anderson v. Cold Spring Tungsten, Inc.*, 170 Colo. 7, 458 P.2d 756 (1969).

The possession necessary to establish title to property by adverse possession need not always be personal possession by the adverse claimant but, in some circumstances, may be established by the conduct of another whom the adverse claimant has authorized. *Holland v. Sutherland*, 635 P.2d 926 (Colo. App. 1981).

Court cannot quiet title in favor of defaulting party even when evidence presented by an appearing party supports the defaulting party's title interests. *Reser v. Aspen Park Ass'n*, 727 P.2d 378 (Colo. App. 1986).

Legal title to disputed parcel in foreclosure of deed of trust action not acquired since the documents showed parties' intent to extinguish prior deed of trust on disputed parcel. *Colo. Nat'l Bank-Exch. v. Hammar*, 764 P.2d 359 (Colo. App. 1988).

Court may not amplify deed by construction of contract. A decree adjudging the defendants to be the owners of the lake, together with incidental rights thereto, is tantamount to a conveyance of the lake. It is an amplification of the deed by decree, something a court may not do under the guise of construing a contract. A court cannot rewrite a contract and thereby change its terms when it is plain, clear, and unambiguous. *Alexander Dawson, Inc. v. Fling*, 155 Colo. 599, 396 P.2d 599 (1964).

Effect of decree following old terminology for quieting title. In an action for reformation of a mortgage and a sheriff's deed issued on its foreclosure, so as to include a parcel inadvertently omitted, the decree in form followed the old terminology for quieting title, and it was urged that the court could not quiet title in the plaintiff, since he held no title thereto. However, it was held that this contention was without merit, since the action was specifically an action for reformation, setting out properly the basis of the claim and complying sufficiently with this rule, as an action to obtain an adjudication of the rights of the parties with respect to real estate. *Stubbs v. Standard Life Ass'n*, 125 Colo. 278, 242 P.2d 819 (1952).

Minor improvements deemed not "taking". The placing of a few minor improvements on property does not necessarily constitute a "taking" of possessions. *Holland v. Sutherland*, 635 P.2d 926 (Colo. App. 1981).

Vendor's action under this rule involved the same subject matter as vendor's prior boundary line action. Therefore the subsequent action was barred by

res judicata. *Agee Revocable Trust v. Mang*, 919 P.2d 908 (Colo. App. 1996).

Because license for recreational use of property is not an interest in the land, trial court did not err in not defining the scope of the license in quiet title action brought under this rule. *Bolinger v. Neal*, 259 P.3d 1259 (Colo. App. 2010).

III. Costs.

Partial disclaimer ineffective. In an action where defendant disclaimed as to part of the premises and claimed title and right of possession as to the remainder, in case of judgment for plaintiff, defendant is not entitled to have part of the cost assessed against plaintiff. *Relender v. Riggs*, 20 Colo. App. 423, 79 P. 328 (1905) (decided under § 276 of the former Code of Civil Procedure).

Defendant with claim for taxes may save costs. Where a defendant disclaims title and sets up its outlays on account of taxes legally assessed, which should have been paid by the plaintiff, and asks for judgment accordingly, the cost is properly a charge against the plaintiff under this section. *Empire Ranch & Cattle Co. v. Lanning*, 49 Colo. 458, 113 P. 491 (1911) (decided under § 276 of the former Code of Civil Procedure).

Attorneys' fees are proper measure of damages in action for slander of title. *Sussex Real Estate Corp. v. Sbrocca*, 634 P.2d 999 (Colo. App. 1981).

Defendant who successfully opposed plaintiff's motion to amend quiet title decree to delete portion pertaining to title interests of defaulting defendants was not entitled to award of attorney fees. *Reser v. Aspen Park Ass'n*, 727 P.2d 378 (Colo. App. 1986).

IV. Lis Pendens.

Annotator's note. Since section (f) of this rule is similar to §38 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

Purpose of recording lis pendens notice is to give notice of the pendency of an action to persons who may subsequently acquire or seek to acquire rights in the property. *King v. W.R. Hall Transp. & Storage Co.*, 641 P.2d 916 (Colo. 1982).

Expired lis pendens did not provide constructive notice of the terms of the judgment of underlying lawsuit. This rule is designed to give party to suit

sufficient time to file notice of appeal or to record transcript of judgment in county where property is situated, but is not intended not to extend constructive notice period beyond thirty days. *Maddalone v. Wilson*, 764 P.2d 403 (Colo. App. 1988) (decided under rule in effect prior to 1981 amendment).

Lis pendens brings the subject matter of the litigation within the control of the court, and renders the parties powerless to place it beyond the power of the final judgment. *Powell v. Nat'l Bank of Commerce*, 19 Colo. App. 57, 74 P. 536 (1903).

Third parties cannot thereafter interfere with the property. In an action involving the title to real property, the effect of filing a lis pendens is to prevent interference by third parties with the property during the pendency of the action. *Shuck v. Quackenbush*, 75 Colo. 592, 227 P. 1041 (1924).

Purchaser from one litigant takes subject to rights of other parties in the action. The general rule as to lis pendens is that a person who acquires an interest in property involved in litigation, pendente lite and from a party litigant, takes subject to the rights of the other parties to the suit as finally adjudicated. *Powell v. Nat'l Bank of Commerce*, 19 Colo. App. 57, 74 P. 536 (1903).

Proper subject of lis pendens. Where a complaint clearly shows that an action relates to the possession, use, or enjoyment of real property, it is, therefore, the proper subject of the filing of a lis pendens. *Clopine v. Kemper*, 140 Colo. 360, 344 P.2d 451 (1959).

The filing of a notice of lis pendens is proper if claimant shows that the underlying action relates to a right to possession, use, or enjoyment of real property. *Salstrom v. Starke*, 670 P.2d 809 (Colo. App. 1983).

Notice of lis pendens is properly filed in any case in which affirmative relief is claimed affecting the title to real property. *Central Allied Profit Sharing v. Bailey*, 759 P.2d 849 (Colo. App. 1988).

The notice of lis pendens and not the pleadings gives constructive notice of pending litigation affecting interests in realty. *Clopine v. Kemper*, 140 Colo. 360, 344 P.2d 451 (1959), overruling *Central Sav. Bank v. Smith*, 43 Colo. 90, 95 P. 307 (1908).

Constructive notice as of day notice is recorded. A notice of lis pendens which refers to a complaint seeking divorce and a division of property, or seeking separate maintenance and an equitable interest in property, is

constructive notice as of the day notice of lis pendens is recorded. *Clopine v. Kemper*, 140 Colo. 360, 344 P.2d 451 (1959).

No notice to grantee under prior recorded deed. Notice of the pendency of a suit involving title to land, filed after the recording of a conveyance, is no notice to the grantee in such conveyance. *Dalander v. Howell*, 22 Colo. App. 386, 124 P. 744 (1912).

"Affecting the title to real property" to be expansively interpreted. An expansive interpretation of the language "affecting the title to real property", as found in section (f), serves to further the policy that successful completion of suits involving rights in real property should not be thwarted by permitting transfers of such property before such suits are resolved. *Cooper v. Flagstaff Realty*, 634 P.2d 1013 (Colo. App. 1981).

A proceeding by a creditor to set aside a conveyance as fraudulent pursuant to §38-10-117 clearly falls within actions affecting the title to real property. *Crown Life Ins. Co. v. April Corp.*, 855 P.2d 12 (Colo. App. 1993).

Litigation of promise to grant deed of trust affects title. Insofar as a case involves litigation of a promise to grant a deed of trust applying to a specific parcel of real property, it is one "affecting" title to that real property within the meaning of section (f). *Cooper v. Flagstaff Realty*, 634 P.2d 1013 (Colo. App. 1981).

Description of property allowing proper indexing is sufficient. The lis pendens notice contains a brief description of the property affected thereby. It is sufficient in this respect if it enables proper indexing against the proper section and block numbers. *Clopine v. Kemper*, 140 Colo. 360, 344 P.2d 451 (1959).

Failing to file lis pendens notice does not relieve persons who have actual notice of the pendency of the action. *Buckhorn Plaster Co. v. Consol. Plaster Co.*, 47 Colo. 516, 108 P. 27 (1910).

Lis pendens will give notice of wife's claim against property of husband. A wife has an equitable interest in the property of her husband. In an action for separate maintenance, praying that she be awarded specific property, lis pendens duly filed is notice of her claim against that property. *Tinglof v. Askerlund*, 96 Colo. 27, 39 P.2d 1039 (1934); *Clopine v. Kemper*, 140 Colo. 360, 344 P.2d 451 (1959).

Summary judgment as to certain defendants does not release lis pendens. Under C.R.C.P. 54(b), this rule, and § 38-40-110, a lis pendens remains in full force and effect until final judgment or until final disposition of a case,

and where a summary judgment dismissing the action and releasing lis pendens as to certain defendants is granted, with no determination that there is no just reason for delay in disposing of the action as to such defendants, such summary judgment is not final for any purpose and the lis pendens is not released. *Broadway Roofing & Supply, Inc. v. District Court*, 140 Colo. 154, 342 P.2d 1022 (1959).

Release of property from notices of lis pendens held valid. *Peoples Bank & Trust Co. v. Packard*, 642 P.2d 57 (Colo. App. 1982).

Disclaimer of interest under section (f)(3) is an absolute bar to future claims to interests in property pursuant to the terms of the disclaimer, regardless of the precise legal theory or reasons that led to making the disclaimer, absent fraud or duress. *Vail/Arrowhead, Inc. v. District Court*, 954 P.2d 608 (Colo. 1998).

An action need not be brought under this rule as a precondition to making an effective disclaimer of interest under section (f)(3). *Vail/Arrowhead, Inc. v. District Court*, 954 P.2d 608 (Colo. 1998).

Adequate remedy to contest release of lis pendens on appeal. *Meaker v. District Court*, 134 Colo. 151, 300 P.2d 805 (1956).

Continuation of lis pendens pending appeal conditioned on posting bond held valid in *Wellman v. Travelers Ins. Co.*, 689 P.2d 1151 (Colo. App. 1984).

Motion to quash lis pendens denied since Colorado law makes no provision for the cancellation of a notice of lis pendens by any court at any time, but instead provides by section (f) of this rule that the notice shall expire automatically. *McGregor v. McGregor*, 101 F. Supp. 848 (D. Colo. 1951), aff'd, 201 F.2d 528 (10th Cir. 1953).

Damages for filing in suit maliciously brought. If a suit is brought maliciously and without probable cause, and notice of lis pendens filed therein, liability would attach for such filing, for any damages occasioned thereby. *Johnston v. Deidesheimer*, 76 Colo. 559, 232 P. 1113 (1926); *Westfield Dev. v. Rifle Inv. Assoc.*, 786 P.2d 1112 (Colo. 1990).

Proceeding to enforce adherence to criteria with respect to construction of improvements is one wherein affirmative relief is claimed affecting the title to real property within the meaning of this rule. *Hammersley v. District Court*, 199 Colo. 442, 610 P.2d 94 (1980).

Filing of notice of lis pendens provides only a qualified privilege with respect to a claim based on intentional interference with a contract and applies only when the one who interferes has, or honestly believes he has, a legally

protected interest and, in good faith, asserts or threatens to assert such claim through proper means. *Westfield Dev. v. Rifle Inv. Assoc.*, 786 P.2d 1112 (Colo. 1990).

Lis pendens expired with the dismissal of plaintiff's appeal. A subsequent settlement between the parties did not resurrect the lis pendens and thus was not binding on the interests of a third party which had filed an interest on the property during the pendency of the lis pendens. *Perry Park Country Club, Inc. v. Manhattan Savings Bank*, 813 P.2d 841 (Colo. App. 1991).

Neither filing a foreclosure action nor recording a lis pendens prevented the United States from releasing its own tax lien, thereby losing its priority over the owners' interests. *U.S. v. Winchell*, 793 F. Supp. 994 (D. Colo. 1992).

V. Description of Real Property.

A divorce action no longer has to describe the property affected. *Clopine v. Kemper*, 140 Colo. 360, 344 P.2d 451 (1959).

Judgment must fix boundary lines with certainty. A judgment decree involving the right to possession of real property must definitely and sufficiently describe it in order that an officer charged with the duty of executing a writ of possession may go upon the premises, and, without exercising any judicial functions whatever, ascertain with certainty the boundary lines fixed by the judgment. *Calvin v. Fitzsimmons*, 129 Colo. 420, 270 P.2d 748 (1954); *Thompson v. Clarks, Inc.*, 162 Colo. 506, 427 P.2d 314 (1967).

The judgment and decree must be so definite and specific in defining the proper location of the boundary lines that all the parties affected thereby may comply with the judgment in every respect. *Calvin v. Fitzsimmons*, 129 Colo. 420, 270 P.2d 748 (1954); *Thompson v. Clarks, Inc.*, 162 Colo. 506, 427 P.2d 314 (1967).

Court may adopt most definite of two repugnant descriptions. Where there are two repugnant descriptions in a deed, the trial court will look into the surrounding facts and will adopt the description which is most definite and certain and which in the light of the surrounding circumstances can be said to effectuate most clearly the intention of the parties. *Wallace v. Hirsch*, 142 Colo. 264, 350 P.2d 560 (1960).

Monuments control over monument calls. In a conveyance of interest in land, whether by ordinary deed or by dedication, if the description of the land be fixed by ascertainable monuments and by courses and distances, the well-settled general rule is that the monuments will control the courses and

distances if they be inconsistent with the monument calls. *Wallace v. Hirsch*, 142 Colo. 264, 350 P.2d 560 (1960).

Where a conveyance is made with reference to an official map or plat, the map or plat becomes a part of the grant. *Radio San Juan, Inc. v. Baker*, 31 Colo. App. 151, 498 P.2d 957 (1972).

**Cross Reference Note:**

For boundary proceedings and surveys, see articles 44 and 50 to 53 of title 38, C.R.S.; for parties to be named in actions concerning real property, see §38-35-114, C.R.S.; for lis pendens as notice, see §38-35-110, C.R.S.; for certificate staying judgment on issuance of bond and its effect on lis pendens, see C.A.R. 8(d).

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