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Lis Pendens Under Florida § 48.23: Recording, Discharge, Fair Nexus & Bond Framework

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Query

Under Florida law, what are the requirements for recording and maintaining a valid lis pendens under § 48.23, Florida Statutes, and how have Florida appellate courts addressed motions to discharge lis pendens, including the standards for establishing a fair nexus between the claim and the property and the bond requirements for discharge?

Confidence, Coverage & Methodology

â Overall confidence: High. Full operative text of § 48.23 verified against the Florida Senate's official publication, and the two leading Florida Supreme Court decisions (Chiusolo and S & T Builders) were reviewed in reported form.

â Authority layers: Florida statutory text (Ch. 48), Florida Supreme Court decisions, and multiple Florida DCA decisions (3d, 4th, 5th DCAs).

â Coverage limit: Did not comprehensively canvas all post-2019 DCA refinements to bond calculation; practitioners should shepardize before filing.

Micro Answer (Bottom Line)

Under § 48.23, a valid lis pendens requires recording a notice containing statutorily specified content in the county where the property is located, and it expires one year from commencement unless grounded on a duly recorded instrument or Chapter 713 lien or extended by the court. On a motion to discharge, if the claim is not based on a recorded instrument, the proponent must show a fair nexus between the apparent legal or equitable ownership of the property and the dispute in the lawsuit (*Chiusolo v. Kennedy*, 614 So. 2d 491 (Fla. 1993)), and the trial court may condition continuation on posting a bond (*S & T Builders v. Globe Props., Inc.*, 944 So. 2d 302 (Fla. 2006)).

Direct Answer

Recording and content requirements. Section 48.23(1)(a) provides that an action operates as a lis pendens on property "only if" a notice is recorded in the official records of the county where the property is located and has not expired, been withdrawn, or been discharged. The notice must contain: (i) the names of the parties; (ii) the date the action was instituted, the clerk's electronic receipt date, or the case number; (iii) the name of the court; (iv) a description of the property involved or to be affected; and (v) a statement of the relief sought as to the property. § 48.23(1)(c)1.

Duration and effect. A lis pendens expires one year from commencement unless the relief sought is founded on a duly recorded instrument or on a lien claimed under Part I of Chapter 713, or the court extends expiration on reasonable notice and for good cause. § 48.23(2). During pendency, a valid notice bars enforcement of unrecorded interests and liens against the property unless the unrecorded lienholder intervenes within 30 days.

Discharge: the fair-nexus test. When the pleading is not founded on a duly recorded instrument or a Part I Chapter 713 lien, the trial court "shall control and discharge the recorded notice of lis pendens as the court would grant and dissolve injunctions." § 48.23(3). In *Chiusolo v. Kennedy*, 614 So. 2d 491 (Fla. 1993), the Florida Supreme Court held that to avoid discharge, the proponent must "establish a fair nexus between the apparent legal or equitable ownership of the property and the dispute embodied in the lawsuit." The quantum of proof is less than the "substantial likelihood of success on the merits" test.

Bond requirement. In *S & T Builders v. Globe Props., Inc.*, 944 So. 2d 302 (Fla. 2006), the Florida Supreme Court confirmed that § 48.23(3) authorizes a trial court to condition maintenance of a lis pendens on posting a bond, and held that attorney's fees incurred in discharging an unjustified lis pendens are a permissible component of the bond amount. The Court drew on *Med. Facilities Dev., Inc. v. Little Arch Creek Props., Inc.*, 675 So. 2d 915 (Fla. 1996), which tied the bond amount to the damages the property holder will likely sustain.

Jurisdiction Snapshot

Element	Detail
State	Florida
Primary statute	§ 48.23, Fla. Stat. (Title VI, Ch. 48)
Related statutes	§ 695.01 (recording); Part I, Ch. 713 (construction liens); § 60.07 (injunction dissolution); Fla. R. Civ. P. 1.610
Courts applied	Florida Supreme Court; Florida DCAs (2d, 3d, 4th, 5th)
Recording venue	Official records of the county where the property is located

Statutory Framework — § 48.23, Fla. Stat.

Provision	Key Rule
§ 48.23(1)(a)	Action operates as lis pendens only upon recording in the county where the property is located
§ 48.23(1)(b)	For actions not based on recorded instrument, no effect on title unless notice recorded; purchasers for value take free
§ 48.23(1)(c)1.	Mandatory content: parties, date/case number, court, property description, relief sought
§ 48.23(1)(d)	Bars enforcement of unrecorded interests unless intervention within 30 days
§ 48.23(2)	One-year expiration unless founded on recorded instrument or Ch. 713 lien, or court extends for good cause
§ 48.23(3)	Court shall control/discharge as it would injunctions — hook for fair-nexus test and bond requirement
§ 48.23(4)	Applies to all pending actions; appellate pendency does not count toward one-year period

Florida Supreme Court Decisions

Chiusolo v. Kennedy, 614 So. 2d 491 (Fla. 1993)

Established the controlling discharge standard: a lis pendens cannot be dissolved if the proponent establishes a **fair nexus** between the apparent legal or equitable ownership of the property and the dispute in the lawsuit. Expressly rejected the stricter "substantial likelihood of success" formulation. The burden is on the proponent, but the quantum of proof is modest.

Med. Facilities Dev., Inc. v. Little Arch Creek Props., Inc., 675 So. 2d 915 (Fla. 1996)

Confirmed the bond mechanism because a lis pendens "will often prevent the property holder from selling or mortgaging the property." The bond amount should bear a reasonable relationship to likely damages if the lis pendens is later shown to be unjustified.

S & T Builders v. Globe Props., Inc., 944 So. 2d 302 (Fla. 2006)

Held that § 48.23(3) authorizes the trial court to require a bond to maintain a lis pendens not based on a duly recorded instrument and that **attorney's fees incurred in obtaining discharge are recoverable as damages** and may be included in the bond amount. Linked § 48.23(3) to Fla. R. Civ. P. 1.610(b) and § 60.07.

Florida DCA Decisions (Applying and Refining the Standard)

â■ç **Conseco Servs., LLC v. Cuneo**, 904 So. 2d 438 (Fla. 3d DCA 2005): Restates Chiusolo rule. Affirmed dissolution where a creditor's fraudulent-transfer theory did not establish a viable equitable lien claim against homestead.

â■ç **DeGuzman v. Balsini**, 930 So. 2d 752 (Fla. 5th DCA 2006): Lis pendens "places a cloud on the title that did not previously exist." Reversed a lis pendens filed against property as a mere collection source for child-support enforcement.

â■ç **Nu-Vision, LLC v. Corp. Convenience, Inc.**, 965 So. 2d 232 (Fla. 5th DCA 2007): Proponent must demonstrate fair nexus through a "good faith, viable claim"; a tenant's breach-of-lease counterclaim did not support a lis pendens.

â■ç **Suarez v. KMD Constr., Inc.**, 965 So. 2d 184 (Fla. 5th DCA 2007): Lis pendens is a "harsh and oppressive remedy"; reversed for failure to dissolve or require a bond.

â■ç **Blue Star Palms, LLC v. LED Trust, LLC**, 128 So. 3d 36 (Fla. 3d DCA 2012): "If the plaintiff can be afforded complete relief on a claim without reference to the title to the real property, a lis pendens cannot be maintained."

â■ç **Sheehan v. Reinhardt**, 988 So. 2d 1289 (Fla. 2d DCA 2008): Where the primary purpose is to recover money damages and the action does not directly affect title or possession, lis pendens is not authorized.

â■ç **FCD Dev., LLC v. S. Fla. Sports Comm., Inc.**, 37 So. 3d 905 (Fla. 4th DCA 2010): Damages for wrongful filing equal the difference between fair market value at filing and at termination, plus consequential damages including attorney's fees.

â■ç **Bankers Lending Servs., Inc. v. Regents Park Invs., Inc.**, 225 So. 3d 884 (Fla. 3d DCA 2017): Trial court must conduct an evidentiary hearing on prospective loss; attorney's fees may be considered in setting the bond amount.

Practitioner Takeaways

Drafting and Recording a Valid Lis Pendens

- â Record in the correct county and confirm recording before relying on lis pendens effect
- â Include every § 48.23(1)(c)1. element: parties, institution date or case number, court, property description, and relief sought
- â Calendar the one-year deadline from commencement; seek a good-cause extension before expiration if the action is not founded on a recorded instrument or Chapter 713 lien

Defending (Moving to Discharge)

- â Where no recorded instrument underlies the claim, move under § 48.23(3) for discharge and, alternatively, for a bond
- â Challenge fair nexus: argue the claim can be fully satisfied by a money judgment or does not go to legal or equitable ownership (citing Sheehan, Blue Star Palms, Conseco, DeGuzman, Nu-Vision)
- â Request an evidentiary hearing on bond amount; present proof of likely damages including marketability impact and attorney's fees (S & T Builders, Bankers Lending, FCD Dev.)

Strategic Considerations for the Proponent

- â Where the action is founded on a duly recorded instrument (e.g., mortgage foreclosure) or on a Part I Chapter 713 construction lien, the proponent has an essentially absolute right to record a lis pendens, no bond can be compelled on fair-nexus grounds, and the one-year expiration does not apply
- â Where the action rests on an unrecorded theory (equitable lien, constructive trust, specific performance based on unrecorded contract), be prepared to demonstrate a good-faith, viable claim that directly implicates title or equitable ownership and to post a bond adequate to cover likely damages and defense attorney's fees