

What is a Lis Pendens?

Lis Pendens is the Latin phrase for pending litigation. More commonly, a lis pendens is referred to as a “notice of pending action.” Persons who buy or lend on the real estate after a lis pendens has been recorded, take the property subject to the claimant’s right, if any, to the real estate. The lis pendens, when recorded, is a notice warning all prospective buyers or encumberers that title to or possession of the real estate is in dispute.



PRESERVATION OF TITLE

The purpose of a recorded lis pendens is to preserve rights to the real estate until the dispute with the owner is resolved. Without the recording of a lis pendens, the person claiming an interest in the title or possession to the real estate runs the risk that the owner will encumber or convey the property to an individual who is unaware of the dispute.

PROPER USE OF LIS PENDENS

A lis pendens affecting title is recorded with the County Recorder office only if the lawsuit it references involves a claim to a right in title or possession of the real estate, or the use of an easement other than one obtained by statute from a regulated public utility.

Title companies usually refuse to insure title free of a lis pendens recorded against the title.

Thus, buyers won’t buy and lenders won’t lend on the property. As a result, the property is often rendered unmarketable while the lis pendens is in effect – especially on specific performance actions by buyers.

The tremendous value of the lis pendens to litigating buyers is its ability to preserve the buyer’s right to purchase and to persuade a hedging seller to perform. Accordingly, the potential for abuse of the lis pendens procedure is readily apparent.

Therefore, be aware that only specific types of lawsuits are proper subjects for recording a lis pendens. Primarily, the lawsuit must affect title or right to possession of the real estate, or the use of specified easements.

CORRECT CLAIMS

If the owner contests a lis pendens which clouds title to his property, the claimant filing the lis pendens has to prove that the action:

- Affects title to or right of possession of the property described in the notice or the use of an easement;
- Was filed for a proper purpose and in good faith and
- Is likely to be successful at trial (i.e. the claimant must establish the probably validity of the claim).

The person recording the lis pendens has the burden of showing these three elements exist. If these three requirements are not established, the lis pendens will be ordered expunged and will no longer affect title.

The proper form to be recorded to remove Lis Pendens is a Withdrawal of Notice of Pendency of Action signed by the Court or the Attorney of Record.

