



Lis Pendens: What Is It How Does it Affect Title

A notice of pendency of action, commonly referred to by the latin phrase “lis pendens”, is a written document, recorded with the county recorder, that provides constructive notice of a pending court action (i.e. a lawsuit) that affects title to, or possession of, real property. In essence, a lis pendens is a notice of pending litigation against a piece of real property.

Real Property Claim

A lis pendens may be recorded if a “real property claim” has been alleged. A “real property claim” means the lawsuit, or claim within the lawsuit, that if meritorious, would affect “(a) title to, or the right to possession of, real property or (b) the use of an easement identified in the pleading, other than an easement obtained pursuant to statute by any regulated public utility.” Code of Civil Procedure §405.4.

Examples of claims where a lis pendens must be filed include quiet title actions, eminent domain proceedings, actions to reestablish lost lands records, partition, mechanic’s lien lawsuits and others.

The Effect Of A Lis Pendens

A lis pendens preserves the claimants rights to the real estate until the dispute with the owner is resolved.

The presence of a recorded lis pendens creates a “cloud on title”, making it nearly impossible to finance, refinance or sell the subject property until the lis pendens has been removed. Regardless of the validity of that lis pendens, any potential purchaser or lender will require that the lis pendens be released before the transaction can be completed.

What Lis Pendens Is Not

Now that you know what Lis Pendens is, let’s look at what it is not. A Lis Pendens is not a lien. It is not a collection notice or anything regarding payment of money. It does not prevent a sale or loan from occurring with respect to the real property to which it pertains. Yes, you read that right...a Lis Pendens does not in and of itself stop sales or loans. What may deter sales and loans is the potential outcome of the litigation, and the risk that the buyer’s acquired title and/or the lender’s security interest in the property could be later encumbered or otherwise affected; which is why serious attention should be given to a Lis Pendens for its potential as a deal killer.

Title companies usually refuse to insure a title with a lis pendens recorded against it. 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 action by buyers.

Removing A Lis Pendens

A lis pendens may be removed through a motion to expunge. A motion to expunge may be granted if the underlying lawsuit or other court action does not contain a “real property claim” that has probable validity. The motion will be granted if it is “more likely than not” that the underlying lawsuit or claim will fail. The prevailing party on a motion to expunge lis pendens may be awarded its reasonable attorney’s fees and costs in the matter unless the court finds the losing party acted with substantial justification.

A lis pendens may also be removed voluntarily. A claimant may remove the lis pendens by recording, filing and serving a notice of withdrawal. Code of Civil Procedure §405.50.

What Your Title Company Does

Title companies will look at documents filed in the court case and determine if the litigation is active or resolved. If it is still active, the transaction may be put on hold pending an outcome. If resolved, your title company may help you get the Lis Pendens removed, depending on the facts and documents in the court case. There is no expiration time for a Lis Pendens; it remains in full force and effect until withdrawn or expunged, but getting it removed from the record may be a challenge.



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