

Kimball, Tirey & St. John LLP

Lis Pendens – A Cloud on Title

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INTRODUCTION

A notice of pendency of action, commonly referred to by the latin phrase “lis pendens”, is a written document, recorded with the county recorder, which provides constructive notice of a pending court action (i.e. a lawsuit) affecting title to, or possession of, real property. This article will provide an overview of the requirements of a lis pendens in California and methods by which a lis pendens may be removed.

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, specific 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 recording of a lis pendens creates a “cloud on title” which notifies interested parties of the pending claims against the subject property. The presence of a recorded lis pendens can make it nearly impossible to finance, refinance or sell the subject property until the lis pendens has been removed.

FORMALITIES

California law has certain filing, service and recording requirements.

First, the lis pendens must be served by registered or certified mail, return receipt requested, to all parties who may have an adverse interest in the property. The parties served should include all record owners of the property in addition to any lien or mortgage holders. Next, the lis pendens may be recorded at the county recorder’s office for the county in which the property is located. Finally, the lis pendens should be filed with the court in which the lawsuit, petition or other court action is pending.

A failure to properly record, serve and file a lis pendens may render the lis pendens “void and invalid”. [Code of Civil Procedure §405.23](#).

The formalities involved with recording, serving and filing a lis pendens are detailed and technical. A full recitation of the technical requirements are beyond the scope of this article. Consult with an attorney if you have specific questions relating to the formalities required for lis pendens.

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](#).

The information contained in this article contains a basic overview of the law relating to lis pendens in California and is not intended as a comprehensive summary of existing law. If you discover that a lis pendens has been recorded against a property in which you have an interest, it is important to consult legal counsel.

For additional information or assistance, contact Attorney Eli A. Gordon at (800) 577-4587 or eli.gordon@kts-law.com. This service is provided on an hourly fee basis.

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