

Understanding Lis Pendens

Panic can break out when people are faced with the unknown, and it is exacerbated when something sounds or looks scary. For example, sharks can be very scary creatures, but thanks to shark week on television, we now have a better understanding of them and know that there are few species to be feared. When a Lis Pendens is found in the preliminary title report, it can bring on the same “shark-like” feelings. Therefore, let’s look more closely at the Lis Pendens in order to better understand what it is, what it does, and most importantly, what it means to the transaction and your title insurance.

What Lis Pendens IS?

A Notice of Pendency of Action, (commonly known as a “Lis Pendens”) is a recorded legal document that, in simple terms, provides notice that there is pending litigation which would, if meritorious, affect title to, or the right to take possession of, or use of, specific real property or easements identified in the action. The term “Lis Pendens” is Latin for “pending lawsuit.” Court files and records are not a part of the constructive notice system of public recordkeeping. The County Recorder’s Office is where documents are recorded that impart constructive notice, which is the same place that all documents affecting real property are recorded and filed, such as Deeds, Deeds of Trust, Notices, Easements, etc. As court records are not a part of this system, the Lis Pendens serves to bridge the gap between the systems. If a court case affecting title to real property is commenced without a Lis Pendens being recorded, the public would not have notice of it, because unrecorded court documents are not picked up in a preliminary title report. The Lis Pendens, once recorded, serves to notify the public that litigation exists which may affect title to the real property described in the Lis Pendens.

What Lis Pendens is NOT:

Now that you know what a 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 subject to it. Yes, you read right... a Lis Pendens does not in and of itself stop sales or loans. What may affect sales and loans is the potential outcome of the litigation, and the risk that the buyer’s acquired title 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.

What Your Title Company DOES:

A good title company, like Equity Title, will look at 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, or the parties may want to take title subject to the Lis Pendens, depending on the facts of the case. If resolved, your title company may help you get the Lis Pendens removed, depending on the facts and documents in the court case. Removing the Lis Pendens may involve obtaining a Withdrawal of Lis Pendens, Expunging (removing) the Lis Pendens or other actions as dictated by your title department. There is no expiration time for a Lis Pendens; it remains in full force and effect until withdrawn or expunged. It may cease to impart constructive notice once the case is dismissed or a judgment becomes final, and after all appeal time has expired, but getting it removed from record may be a challenge.

We look forward to helping you with your next deal,
and if you should encounter a Lis Pendens, don’t panic.
Just reach out to us and we’ll help you understand the details.



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Source: Randy Sierra, Vice President, Chief Title Officer, TRG

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