

LIS PENDENS

A notice filed in the office of public records that the ownership of real property is the subject of a legal controversy and that anyone who purchases it takes it subject to any claims asserted in the action and thereby its value might be diminished.

DEFINITION

Lis pendens is Latin for "suit pending." This may refer to any pending lawsuit or to a specific situation with a public notice of litigation that has been recorded in the same location where the title of real property has been recorded. This notice secures a plaintiff's claim on the property so that the sale, mortgage, or encumbrance of the property will not diminish plaintiff's rights to the property, should the plaintiff prevail in its case. In some jurisdictions, when the notice is properly recorded, lis pendens is considered constructive notice to the other litigants or other unrecorded or subordinate lienholders. The term is sometimes abbreviated as "lis pend".

In current practice, a lis pendens is a written notice that a lawsuit has been filed concerning real estate, involving either the title to the property or a claimed ownership interest in it. The notice is usually filed in the county land records office. Recording a lis pendens against a piece of property alerts a potential purchaser or lender that the property's title is in question, which makes the property less attractive to a buyer or lender. After the notice is filed, anyone who nevertheless purchases the land or property described in the notice takes subject to the ultimate decision of the lawsuit.

The recording office will record a lis pendens upon request of anyone who claims to be entitled to do so (e.g. because he has filed a lawsuit). If someone else with an interest in the property (e.g. the owner) believes the lis pendens is not proper, he can then file suit to have it expunged.

Some states' lis pendens statutes require the filer of the notice, in the event of a challenge to the notice, to establish that it has probable cause or a good likelihood of success on the merits of its case in the underlying lawsuit; other statutes do not have such a requirement.

EFFECT

Lis pendens is taken as constructive notice of the pending lawsuit, and it serves to place a cloud on the title of the property in question until the suit is resolved and the notice released or the lis pendens is expunged. Reputable, careful lenders will not lend money on the security of land which is subject to a lis pendens, as title insurance companies will not insure the title to such land: title is taken subject to the outcome of the lawsuit. Because so much real property is purchased with borrowed money, this largely keeps the owner from selling the property. It also may keep the owner from borrowing money secured by the property (such as to pay the costs of defending the suit). Similarly, careful buyers will be unwilling to purchase the land, at least not at what the full value would be without the cloud on title.

It is important to note that the presence of a lis pendens does not prevent or necessarily invalidate a transfer of the property, although it makes such a transfer subject to the outcome of the litigation. As such, it tends to scare off diligent, reputable lenders and careful buyers. Thus, the owner is not prevented from selling the land for (non-borrowed) cash, pledging it as security for a speculative loan, or giving it away—subject to the outcome of the lawsuit. However, once the lis pendens is recorded, the recipient (a "purchaser" or "grantee pendente lite") would be deemed to have notice of the litigation, and thus would not be a bona fide purchaser, and the title might be regained.

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