

The 'Lis Pendens' in a Title Transaction



A Lis Pendens gives constructive notice of a pending lawsuit relating to real property or affecting the title or the right of possession of real property. **The Lis Pendens will show on our Preliminary Title Report and raises the question as to who has the ownership rights on said property.** Once recorded the Lis Pendens imparts constructive notice not only of its contents (provided it meets statutory requirements) but also of facts concerning the action that could be discovered by reasonable inquiry.

A Lis Pendens creates a “cloud on title” which could render the property unmarketable. Said Lis Pendens remains as long as the action is pending, unless it is voluntarily withdrawn or expunged (wipe out - erase) by motion to the court. Caution should still be used even if the Lis Pendens is removed since danger may still exist for a Title Company. In order for a Title Company to close the transaction the Lis Pendens must be released.

The grounds for expungement include the following:

- 1) Underlying action does not Affect title to or the right to possession to the real property described in the notice, or
- 2) The lawsuit was not commenced, or is not being prosecuted for a proper purpose and in good faith.

The court may also order the expungement, even if they decide the real property claim is probably valid, if the court decides that adequate relief can be secured by posting a bond, an amount sufficient to indemnify the claimant against all resulting damages from removing the Lis Pendens.

If a motion to expunge is granted, a certified copy of an order expunging the Lis Pendens may not be recorded, until the period of time of filing a petition for review