SYNDICATE LEGAL ADVISORY SERVICES

LIS PENDENS

Syndicate Legal Advisory Services – *Lis Pendens*

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What is Lis Pendens (aka, "Notice of Pendency Action"):
Formerly known as a "Lis Pendens," a Notice of Pendency of Action 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. "'Notice of pendency of action' or 'notice' means a notice of the pendency of an action in which a real property claim is alleged." Cal. Code Civ. Proc. § 405.2.

Requirements to file a Lis Pendens action in the State of California:

The action must be pending. In order to record a Lis Pendens in California, an action must first be pending in the proper court. The notice can only be recorded by a party to an action in which a real property claim is alleged. *See Code Civ. Proc., § 405.20.* It must be signed by the attorney of record in the action, ***or*** by a party appearing in *pro per* if approved by the judge in the action. *See Cal. Code Civ. Proc., § 405.21.* Neither requirement can be satisfied if no action is pending. A purported Lis Pendens recorded before an action is filed in the proper court is of no effect and can be expunged. If the claim on which the Lis Pendens is based is dismissed, a previously recorded Lis Pendens is ineffective since there is no longer a pending action asserting a real property claim. The "action" to support a Lis Pendens may take the form of a cross-complaint as well as an original complaint on the action. *See Cal. Code Civ. Proc., § 405.1* (defining "claimant" as a party to an action who asserts a real property claim) and *see Cal. Code Civ. Proc. § 405.20* ("A party to an action who asserts a real property claim may record a notice of pendency of action in which that real property claim is alleged").

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The action must involve a real property claim. A Lis Pendens must pertain to an action in which a "real property claim" is alleged. A Lis Pendens may not be filed, and if filed may be expunged, where the action pleaded does not include a "real property claim." A "real property claim" means a cause of action in a pleading which would, if meritorious, affect title to or possession of specific real property, or the use of an easement identified in the pleading. If no such claim appears in the pleadings, a Lis Pendens is improper, and may be expunged, and no undertaking may be required as a condition of the expungement. There is no requirement that the specific nature of the action appear in the recorded Lis Pendens, however. *see Cal. Code Civ. Proc. § 405.20*

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