What is Lis Pendens?

A lis pendens literally means that litigation is pending. It tells the public that a lawsuit affecting the property is in progress and that any judgment awarded in that legal action will have priority as of the date of the lis pendens. Some lawyers file a lis pendens creates a cloud on the title and can prevent a potential sale of the property taking place.

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 notice is recorded in the County Recorders Office in which the property is located, at the time the complaint or cross complaint is files, or at any time thereafter.

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 Said lis pendens remains as long as the action is pending, unless it is voluntarily withdrawn or expunged (wiped out, erased) by motion to the court (caution should still be used even if the lis pendens is removed since potential for litigation still exists.

The ground for expungement include the following:

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

The court may also order 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 by the court of appeals, has expired.

Fidelity National Title