

LIS PENDENS

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The term *lis pendens* is Latin for "lawsuit pending," and the lawsuit that it is referring to is the legal process of foreclosure. If the lender was not suing for the property to be sold for payment of the defaulted mortgage loan, this document would never be filed in the first place, as no lawsuit would be pending. A *lis pendens* does not stop or prevent foreclosure at all, as it is merely a document serving notice upon any other party that is researching the particular property affected by the document. In most cases of a homeowner behind on the mortgage payments, the lender's attorneys will file the initial foreclosure lawsuit with the court and a *lis pendens* will be sent to the county clerk or recorder's office to indicate that a particular property is in the process of a pending litigation. The book definition is: *Lis pendens* is a written notice that a lawsuit has been filed which concerns the title to real property or some interest in that real property. The *lis pendens* (or notice of pending action) is filed with the clerk of the court, certified that it has been filed, and then recorded with the County Recorder. This gives notice to the defendant who owns real estate that there is a claim on the property, and the recording informs the general public (and particularly anyone interested in buying or financing the property) that there is this potential claim against it.

So what does this mean in English and what does it mean to a potential real estate buyer?

In a nutshell, if there has been a *lis pendens* filed, someone is saying, "Hey, I have a piece of this property and you can't have it." They may (think) they own all or part of it, or they may have a lien against it and they have (or are about to) file a law suit stating their claim. Now whether or not this claim is true may, or may not, be a different story. That will be up to the court to decide. A *lis pendens* will place a "cloud" on the title that will have to be cleared before you can take title to the property. I haven't met a title company yet that will issue title insurance if a *lis pendens* has been filed. They can't, as they don't know if the title will be clear to transfer to you, the prospective buyer. No title insurance, no loan. Now this isn't to say that a *lis pendens* will prevent the purchase of a property, but it will have to be resolved. In these days of frivolous litigation, many of these things just fall apart as they progress through the system, the lawsuit is dropped, and the *lis pendens* is removed. If you are a cash buyer, and for some ridiculous reason decide you don't want title insurance, a *lis pendens* won't prevent a sale. Just be aware that should the reason for the *lis pendens* be true, you may not be able to take title or you may have to cough up more money to satisfy a lien holder.