

FILE OR EXPUNGE A LIS PENDENS (NOTICE OF PENDING ACTION) IN CALIFORNIA



Notice Of Pendency Of Action (Lis Pendens) - General Concepts

A "notice of pendency of action" or "notice" is a notice of the pendency of an action in which a real property claim is alleged. [Code Civ. Proc. §405.2] Formerly known as a "lis pendens", a notice of pendency of action provides constructive notice to purchasers or encumbrancers of real property of any pending court actions affecting title to or possession of real property and enables those parties to find notice of pending litigation in the recorder's office in which the real property is located. It furnishes the most certain means of notifying all persons of the pendency of the action and to warn them against any attempt to acquire a legal or equitable interest in the real property. A notice of pendency of action gives constructive notice not only of the facts apparent on the face of the pleadings in the action, but also all facts concerning the pending court action that could have been ascertained by proper inquiry.

The statutes primarily governing the recording of a notice of pendency of action are found at Code Civ. Proc. §§405–405.61. The basic circumstances and requirements for recording a notice of pendency of action are found in Code Civ. Proc. §§405.20–405.24. A notice of pendency of action is available in real property claims as defined in Code Civ. Proc. §405.4.

Necessary Underlying Real Property Claim

A notice of pendency of action is available in actions involving "real property claims." A "real property claim" is the cause or causes of action in a pleading which would, if meritorious, affect: (1) title to, or the right to possession of, specific real property; or (2) the use of an easement identified in the pleading, other than an easement obtained pursuant to statute by any regulated public utility. [Code Civ. Proc. §405.4] The "claimant" is a party to an action asserting a real property claim and recording a notice of the pendency of the action. [Code Civ. Proc. §405.1]

Actions Requiring The Filing Of A Notice Of Pendency Of Action

Recordation of a notice of pendency of action is required in the following actions and circumstances:

1. immediately on commencement of a quiet title action [Code Civ. Proc. §761.010(b)]
2. at the commencement of an eminent domain proceeding in the recorder's office in any county in which property described in the complaint is located; a copy of the notice must be served with the summons and complaint [Code Civ. Proc. §1250.150]
3. at the time of filing a complaint in an action to reestablish lost land

- records [Code Civ. Proc. §751.13]
4. immediately after filing the complaint for partition of real property; a supplemental notice must be filed when partition of additional property is sought in the same action; and the court is authorized to order notice when it is not given as required [Code Civ. Proc. §872.250(a)–(c)]
 5. within 10 days after filing the complaint in an action to determine adverse interests in, or liens or clouds upon title to real property arising out of public improvement assessments [Code Civ. Proc. §801.5]
 6. to give constructive notice of the pendency of an action involving a claim against the state for escheated property [Code Civ. Proc. §1355]
 7. to give constructive notice in an action by the Attorney General to escheat real property [Code Civ. Proc. §1410]
 8. in actions to abate a public nuisance [Health & Saf. Code §17985]
 9. within 10 days of an action by a purchaser to quiet title to tax deeded property [Rev. Code §3956]
 10. with the clerk of the probate court in an action to enforce a claim rejected by an executor or administrator of a decedent's estate [Prob. Code §9354(b)]
 11. with the city or county treasurer in an action on an improvement bond [Sts. & Hy. Code §6619]
 12. before trial in an action by an innocent improver of real property against the owner and encumbrances of record [Civ. Code §1013.5(b)]
 12. at the time a forfeiture petition is filed for real property acquired from criminal profiteering activity and in each county where that property is located [Pen. Code §186.4]

Recording Requirements

A party to an action who asserts a real property claim may record a notice of pendency in the action in which that real property claim is alleged. The notice must be recorded in the office of the recorder of each county in which all or part of the real property is situated. The notice must contain the names of all parties to the action and a description of the property affected by the action. [Code Civ. Proc. §405.20]

An attorney of record in an action may sign a notice of pendency of action. Alternatively, a judge of the court in which an action that includes a real property claim is pending may, on request of a party, approve a notice of pendency of action. A notice of pendency of action must not be recorded unless: (1) it has been signed by the attorney of record; (2) it is signed by a party acting in propria persona and approved by a judge; or (3) the action is one in eminent domain and subject to Code Civ. Proc. §405.6. [Code Civ. Proc. §405.21]

Except in eminent domain actions subject to Code Civ. Proc. §405.6, a real property claimant must, prior to recordation of the notice of pendency of action, cause a copy to be mailed, by registered or certified mail return receipt requested, to all known addresses of the parties to whom the real property claim is adverse and to all owners of record of the real property affected by the real property claim as shown by the latest county assessment roll or more recent assessment information in the possession of the county assessor. If there is no known address for service on an adverse party or owner, then as to that party or owner a declaration under penalty of perjury to that effect must be recorded instead of the required proof of service, and service on that party or owner will not be required.

Immediately following recordation, a copy of the notice must also be filed with the court in which the action is pending. Service must also be made immediately and in the same manner on each adverse party later joined in the action. [Code Civ. Proc. §405.22] Any notice of pendency of action will be void and invalid as to any adverse party or owner of record unless these requirements are met for that party or owner and a proof of service in the form and content specified in Code Civ. Proc. §1013a has been recorded with the notice of pendency of action. [Code Civ. Proc. §405.23]

Undertaking

Generally, at any time after a notice of pendency of action has been recorded, the court may, on motion by any person with an interest in the property, require the claimant to give the moving party an undertaking as a condition of maintaining the notice in the record title. However, a person who is not a party to the action must obtain leave to intervene from the court at or before the time the person moves to require an undertaking. The court may permit evidence to be received in the form of oral testimony and may make any orders it deems just to provide for discovery by any affected party. The undertaking must be of a nature and in an amount as the court may determine to be just. In its order requiring an undertaking, the court must set a return date for the claimant to show compliance and if the claimant fails to show compliance on the return date, the court must order the notice of pendency of action expunged without further notice or hearing. [Code Civ. Proc. §405.34]

However, in proceedings for expungement and other relief, the court may not order an undertaking to be given as a condition of expunging the notice of pendency where the court finds the pleading does not contain a real property claim, or the claimant has not established the "probable validity" of the real property claim. [Code Civ. Proc. §§405.31 and 405.32] "Probable validity" of a real property claim means that it is more likely than not that the claimant will obtain a judgment against the defendant on the claim. [Code Civ. Proc. §405.3]

Expunging A Lis Pendens

At any time after notice of pendency of action has been recorded, any party, or any nonparty with an interest in the affected real property, may apply to the court in which the action is pending to expunge the notice. However, a person who is not a party to the action must obtain leave to intervene from the court at or before the time the party brings the motion to expunge the notice.

Evidence or declarations may be filed with the motion to expunge the notice. The court may permit evidence to be received in the form of oral testimony, and may make any orders it deems just to provide for discovery by any party affected by a motion to expunge the notice. The claimant has the burden of proof of the presence of a real property claim or its probable validity under Code Civ. Proc. §§405.3, 405.31 and 405.32.

In proceedings for expungement and other relief, the court must order the notice of pendency of action expunged if the court finds that the pleading on which the notice is based does not contain a real property claim.

The court must also order that the notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable

validity of the real property claim. The court may not order an undertaking to be given as a condition of expunging the notice if the court finds the claimant has not established the probable validity of the real property claim. [Code Civ. Proc. §405.32]

In proceedings for expungement or other relief, the court must order that the notice be expunged if the court finds that the real property claim has probable validity, but adequate relief can be secured to the claimant by the giving of an undertaking. The expungement order must be conditioned on the giving of the undertaking of a nature and in an amount as will indemnify the claimant for all damages proximately resulting from the expungement that the claimant may incur if the claimant prevails on the real property claim.

The court must direct that the party prevailing on any motion for expungement or other relief under Code Civ. Proc. §§405.30–405.39 be awarded the reasonable attorney fees and costs of making or opposing the motion, unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney fees and costs unjust. [Code Civ. Proc. §405.38]

Withdrawal Of Notice Of Pending Action

At any time after notice of pendency of an action has been recorded under Code Civ. Proc. §§405–405.61 or other law, the notice may be withdrawn by recording, in the office of the recorder in which the notice of pendency was recorded, a notice of withdrawal executed by the party who recorded the notice of pendency of action or by the party's successor in interest. The notice of withdrawal must be acknowledged. [Code Civ. Proc. §405.50]

- Gene Kinsey

Gene Kinsey Kinsey Law Offices 1198 Pacific Coast Hwy., Suite 353 Seal Beach, CA 90740	Phone: (562) 596-8177 Email: KinseyE@ix.netcom.com Web: www.kinseylaw.com www.realpropertypartition.com
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