



## Notice of Pendency of Action (Lis Pendens)

A “notice of pendency of action,” also known as a “*lis pendens*” (Latin for “a suit pending”), is a written notice that a lawsuit has been filed that may affect either the title to, possession of, or a claimed ownership interest in real property. The notice is usually filed in the county Recorder’s office. Recording the notice alerts a potential purchaser or lender that the property’s title is in question, which can make the property less attractive to a buyer or lender.

For the purposes of this article, all code sections refer to the California Code of Civil Procedure, unless otherwise indicated.

### The Underlying Action

A notice of pendency of action is available in actions involving “real property claims,” which are defined in California Code of Civil Procedure § 405.04 as “the cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right to possession of, specific real property or (b) the use of an easement identified in the pleading, other than an easement obtained pursuant to statute by any regulated public utility.”

In addition, some types of cases require that a notice of pendency of action be filed:

- At the time of filing a complaint in an action to reestablish lost land records. (§ 751.13.)
- Immediately upon commencement of a quiet title action. (§ 761.010(b).)
- Within 10 days after filing the complaint in an action concerning real property titles affected by public improvement assessments (§ 801.5.)
- Immediately upon filing a complaint for partition of real property; if, thereafter, partition of other real property is sought in the same action, a supplemental notice is also required. (§ 872.250.)
- At the time of the commencement of an eminent domain proceeding. (§ 1250.150.)
- To give constructive notice of the pendency of an action involving a claim against the state for escheated property (§ 1355.)
- In an actions involving the accession to real property, by the improver of such property, who acted in good faith, against the owner and encumbrances of record. (Civil Code § 1013.5(b).)
- 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 (Probate Code § 9354.)
- Within 10 days of bringing an action by a purchaser to determine adverse claims to or clouds upon the title to tax deeded property (Revenue and Taxation Code § 3956.)
- With the city or county treasurer in an action for recovery on an improvement bond (Streets and Highways Code § 6619.)

### Recording Requirements

Unless otherwise specified, the notice must be recorded in the office of the Recorder of each county in which all or part of the 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.

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.

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A notice of pendency of action may not be recorded unless: (a) it has been signed by the attorney of record, (b) it is signed by a party acting in propria persona and approved by a judge as provided in this section, or (c) the action is subject to § 405.6 (eminent domain).

Except in eminent domain actions under § 405.6, the claimant shall, prior to recording the notice, 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.

Immediately following recording, a copy of the notice shall also be filed with the court in which the action is pending. Service shall also be made immediately and in the same manner upon any adverse party later joined in the action.

Any notice of pendency of action shall be void and invalid as to any adverse party or owner of record unless the above requirements are met for that party or owner and a proof of service in the form and content specified in § 1013a has been recorded with the notice of pendency of action.

### Undertaking

Generally, at any time after a notice of pendency of action has been recorded, the court may, upon 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 shall obtain leave to intervene from the court at or before the time the person moves to require an undertaking.

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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.

An undertaking required pursuant to this section shall be of such nature and in such amount as the court may determine to be just. In its order requiring an undertaking, the court shall set a return date for the claimant to show compliance and if the claimant fails to show

compliance on the return date, the court shall order the notice of pendency of action expunged without further notice or hearing.

### Expunging a Notice of Pendency of Action

At any time after notice of pendency of action has been recorded, any party, or any nonparty with an interest in the real property, may apply to the court to expunge the notice.

However, a person who is not a party to the action shall 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 shall have the burden of proof under §§ 405.31 and 405.32.

The court must order the notice expunged if the court finds that the pleading on which the notice is based does not contain a real property claim, or the claimant has not established the probable validity of the real property claim (e.g. it is

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more likely than not that the claimant will obtain a judgment against the defendant).

The court may not order an undertaking to be given as a condition of expunging the notice where the court finds the pleading does not contain a real property claim, or finds that the claimant has not established the probable validity of the claim.

In expungement proceedings, the court shall 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.

In an expungement proceeding, the court shall direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney's 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's fees and costs unjust.

### Withdrawing the Notice of Pendency of Action

At any time after notice of pendency of an action has been recorded, 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 or by the party's successor in interest. This notice of withdrawal must be acknowledged.



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Suzanne Ervine, founder of Red Sky Legal, is a bonded legal document assistant (LDA) registered in San Diego County, and a freelance paralegal. Prior to establishing her LDA practice, Suzanne worked as a paralegal in both law firm and corporate environments.

Suzanne is a leader in the self-help legal movement. In 2007, she co-founded the Alliance of Legal Document Assistant Professionals, and currently serves as its vice president and director of communications. She is a member of the San Diego Paralegal Association, Female Legal & Investigative Professionals (FLIP), HALT and SelfHelpSupport.org.

Suzanne graduated at the top of her class in the ABA Approved Paralegal Certificate Program, *Honors*, at the University of San Diego. Upon graduation, she was honored with both the Top Business Litigation Student Award and the Legal Research and Writing Award. She holds a Bachelor's Degree in Communication, *Cum Laude*, from California State Polytechnic University, Pomona. She is a commissioned Notary Public.

Suzanne is an avid writer. She has authored numerous self-help legal publications, and actively publishes several law-related blogs. She is a contributor to *Paralegal Gateway*, and recently co-authored the *LDA Code of Ethics and Professional Responsibility* and the *Clients' Bill of Rights* adopted by the Alliance of Legal Document Assistant Professionals.

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