

Protecting Real Estate Rights - Filing a Lis Pendens in Virginia

April 11, 2024

By Anders Sleight



In the realm of real estate litigation, securing or defending your interests during a pending legal action is paramount. One tool often utilized is the filing of a lis pendens, a Latin term meaning "suit pending." In Virginia, the lis pendens memorandum serves as a notice to prospective buyers, lenders, or interested parties that a property is subject to a claim involved in litigation.

How to file a lis pendens in Virginia:

1. **Initiate Legal Action concerning an interest in Real Property:** First, a legal action concerning the specific real property must be filed. Common legal actions include claims related to ownership, title defects, construction, or other property interests. Importantly, a party cannot file a lis pendens memorandum unless the action on which the lis pendens is based seeks to establish an interest by the filing party or to enforce a zoning ordinance. [Code § 8.01-268.](#)
2. **Draft the lis pendens memorandum:** Once a legal action is filed, the claimant must draft the lis pendens memorandum and include the following information:
 1. the title of the pending legal action
 2. the general object of the legal action
 3. the court where the legal action is pending
 4. the amount of the claim asserted by the plaintiff
 5. a description of the real property
 6. the name of the person whose estate is intended to be affected by the lis pendens
 7. a description of the alleged zoning violation (only in actions to enforce a zoning ordinance)
3. **Recording with the Circuit Court Clerk:** Once drafted, the lis pendens memorandum must be recorded with the Circuit Court Clerk in the jurisdiction where the property is located. Recording ensures that the memorandum becomes part of the public record and is accessible to anyone conducting due diligence on the property.
4. **Maintaining Compliance:** Claimants must adhere to all statutory requirements and deadlines associated with filing a lis pendens in Virginia. Failure to comply with these requirements could result in the lis pendens being deemed invalid or ineffective.

Why File a Lis Pendens?

1. **Preservation of Property Rights:** Filing a lis pendens in Virginia allows claimants to preserve their rights and interests in real property during the pendency of litigation. The lis pendens is a publicly recorded document that provides notice to potential buyers, lenders, or claimants and can prevent unauthorized transactions or encumbrances on the property.
2. **Protection Against Conveyances:** Lis pendens acts as a safeguard against possible fraudulent or voluntary conveyances of property during pending litigation. By alerting third parties to the existence of pending litigation concerning real property, claimants can deter individuals from attempting to transfer or encumber the property in bad faith.
3. **Enhanced Negotiating Position:** The presence of a lis pendens can strengthen a claimant's negotiating position during settlement discussions. Interested parties may be more inclined to reach a favorable resolution, knowing that the property's status is subject to ongoing litigation.
4. **Public Notice:** Filing a lis pendens provides public notice of the legal action, thereby reducing the risk of subsequent purchasers or lenders claiming ignorance of the litigation. This transparency promotes fairness and protects the interests of all parties involved.

Conclusion

Filing a lis pendens serves as a vital tool for claimants seeking to protect their rights and interests in real property during the course of litigation. By following the prescribed process and understanding the strategic advantages of filing a lis pendens, claimants can effectively assert their claims and mitigate the risk of adverse actions against the property. If you or your organization have a real estate-related claim, consulting with a trusted attorney in your area is critical. While outcomes cannot be guaranteed and past performance cannot assure future success, Offit Kurman litigator [Anders Sleight | Offit Kurman](#) is available to evaluate your specific situation.