

ATLANTA

BUILDING NEWS



HOME BUILDING TREND: BUYERS SHIFT TO LOWER-DENSITY, LOWER-COST MARKETS

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AN OVERVIEW OF DESIGN AND MARKET
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UNDERSTANDING THE LIS PENDENS

by Tyler C. Dunn

If you become embroiled in a dispute over the sale of a home or the acquisition of a piece of property, it's important to understand what a lis pendens is and its consequences. Lis pendens is a Latin phrase that means "a suit pending."

Today, a lis pendens is a notice recorded in the county real estate records stating that a lawsuit involving a claim on specific real property has been filed. A recorded lis pendens gives notice of the lawsuit to the general public. It can be recorded by a plaintiff or a defendant with a counterclaim. Any buyer, lender or other person who acquires an interest in the real estate after a lis pendens is recorded is bound by the results of the underlying lawsuit. The Georgia statute requires the notice to include the court in which the suit was filed; the name of the parties to the suit; the time the suit was filed; a description of the property; and a statement of the relief sought regarding the property.

A lis pendens is appropriate only when the lawsuit seeks relief directly relating to that real estate. If a suit seeks only money damages and no relief respecting the real estate itself, a lis pendens is inappropriate, even if the damages sought arise from a real estate transaction or otherwise relate to real estate. Examples of valid real property claims justifying a lis pendens include actions for quiet title, partition, specific performance or rescission of a contract for the purchase of real property, foreclosures, or property claims in a divorce action. A lis pendens cannot be filed in Georgia to give notice of an out-of-state lawsuit that involves Georgia property.

By itself, a lis pendens does not constitute a lien or prevent the sale of the property. However, practically most prospective buyers, lenders and title insurers will be reluctant to become involved with property that could be adversely impacted by a lawsuit. Generally, a lis pendens will remain on record until a final judgment

is issued in the underlying lawsuit. So, a lis pendens could affect property for years. In Georgia, a court can order the expungement, or removal, of a lis pendens that should not have been recorded.

Although a lis pendens can give a plaintiff leverage to force a resolution of claims, if

it is filed without basis or with an improper purpose, the filer could risk a slander of title claim and a judgment to pay the defendant's damages and attorney's fees. In general, a lis pendens should not be filed unless the filer is confident that the claims asserted are justified and the filing meets the legal requirements. ▲

