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WHAT IS A LIS PENDENS?

- Lis Pendens means: Pending lawsuit affecting title to real property.

Washington law provides that a Lis Pendens may only be recorded where there is an “action affecting title to real property.”

RCW 4.28.320 states in part that:

At any time after an action affecting title to real property has been commenced... the plaintiff, the defendant...[others] may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in that county affected thereby.

The recording of a Lis Pendens in an action involving title to real property serves two purposes: (1) to provide notice to anyone interested in a particular piece of real property and who may be affected by the outcome of litigation involving that property and; (2) to prevent “third persons from acquiring, during pendency of the litigation, interests in the property which would prevent the court from granting suitable relief or such as would vitiate a judgment subsequently rendered in the litigation.¹”

- Covenants affect title to real property: the common plan.

The key to enforcement of covenants by a subdivision lot owner is the existence of a “common plan.” Courts look for a common grantor/developer who puts a large tract of land up for sale as individual lots, a substantial number of which are sold subject to uniform restrictions protecting the nature of the neighborhood. The exhibition of a plat or map of the entire tract and the actual physical development of the subdivision in accordance with the restrictions are additional factors lending weight to an argument that a “common plan” exists, establishing a plan of uniform neighborhood development, and the plan is still viable.²

When the common plan is violated, homeowners may bring an action to enforce the common plan. The CCRs provide the acceptable land uses within the common plan. The Lis Pendens provides notice to someone who takes property subject to a lawsuit that certain land uses are deemed non-compliant with the common plan.

¹ *Schwab v. City of Seattle*, 64 Wash.App. 742 (Div. II 1992)

² See *Mt. Baker Park Club, Inc. v Colcock*, 45 Wn.2d 467, 275 P.2d 733 (1954); *Tindolph v Schoenfeld Bros.*, 157 Wash. 605, 289 P.530 (1930); *Ronberg v Smith*, 132 Wash. 345, 232 P.283 (1925).

- Restrictive covenants are enforceable promises regarding the use of land.

Well-established Washington law provides that restrictive covenants are enforceable promises regarding the use of land.³

Washington law expressly states that covenants affect title, and such covenants bind real property. The effect that the covenants have on the property will ultimately affect title to the property. A Lis Pendens is therefore a valid notice of the pendency of an action (law suit) affecting title to real property.

³ [*Viking Props. Inc. v. Holm*, 155 Wash.2d 112, 119, 118 P.3d 322 \(2005\).](#)