



Lis Pendens: What It Is, How It's Used, and How to Remove It

A Lis Pendens is a notice recorded against real property warning the world that a lawsuit is pending that affects title to, or an interest in, that property. Once filed, it typically surfaces in title searches making buyers, lenders, and title companies reluctant to transact on the property.

A Litigation Tool

Plaintiffs typically file Lis Pendens for legitimate reasons to protect a real claim related to the property while litigation is pending. But because a lis pendens can freeze a sale or refinance, some plaintiffs use it as leverage, filing one against property with no real connection to their claim to further pressure a defendant owner. Accordingly, property owners need to understand their rights by removing such filings.

Removing an Improper Lis Pendens

An improperly filed Lis Pendens can be expunged, but that does not mean the process is easy or that removal will compensate you for the harm caused. Texas courts have generally treated a lis pendens filing as absolutely privileged, reasoning that it is part of the judicial process itself. *Prappas v. Meyerland Cmty. Imp. Ass'n*, 795 S.W.2d 794 (Tex. App. 1990). If that privilege applies broadly, a property owner's remedy is likely limited to the expungement statute, under which the court has no obligation to award damages and fees. Under this view, a property owner may not be able to sue for independent damages or recover the fees incurred in seeking expungement, even if granted.

A Potential Split of Authority: Could an Improper Lis Pendens Be a Fraudulent Lien?

Lis pendens filers use the *Prappas* absolute privilege to generally bar the opposing property-owner claims arising from an improper lis pendens such as tortious interference or clouding of title, but whether it also bars a fraudulent lien claim under Section 12.002 appears to be unsettled. In *County Investment, LP v. Royal West Investment, LLC*, 513 S.W.3d 575 (Tex. App.—Houston [14th Dist.] 2016), the Houston Fourteenth District extended the privilege to bar such claims, reasoning that the privilege's availability "does not turn on whether the party placing the lis pendens acted in good faith." Under this holding, the only proper remedy may be expungement, not any independent damages claim.

The Dallas Court of Appeals has expressly declined to follow that holding. In *Campbell v. Martell*, No. 05-19-01413-CV (Tex. App.—Dallas May 3, 2021) (mem. op.), the court held that a Section 12.002 counterclaim over an invalid lis pendens was not barred by the privilege, finding *County Investment's* reasoning "stands in direct contrast" to the statute's prohibition on filing fraudulent court records. Similarly, Houston's other Court of Appeals (the First District) in *Diogu v. Ratan–Aporn*, No. 01-14-00694-CV (Tex. App.—Houston [1st Dist.] June 30, 2015) (mem. op.), declined to extend the privilege to a Section 12.002 claim and affirmed a judgment awarding \$10,000 in statutory damages, \$25,000 in exemplary damages, and attorneys' fees against the filer.

Because this split remains seemingly unresolved, whether an improper lis pendens can support fraudulent lien liability (the greater of \$10,000 or actual damages, plus costs, fees, and exemplary damages) may depend on which court of appeals hears the case and/or if the issue is ever raised to the Texas Supreme Court. Even assuming a fraudulent lien claim is viable in response to an improper lis pendens, proving the filer's knowledge and intent is typically a fact issue for a jury. Thus, the immediate practical relief remains expungement while any fraudulent lien claim may be reserved for trial.

Best Practice: Send a Demand Letter First

Given this uncertainty, one safe course of action before seeking expungement or filing a fraudulent lien action may be to send the filer a demand letter. State the specific grounds for removal, such as the absence of any pending action affecting that property, and detail your damages: interference with financing, carrying costs from being unable to sell or refinance, and attorneys' fees incurred and expected to be incurred through expungement and removal. Flag to the filer that, under *Campbell* and *Diogu*, an improper lis pendens may also expose the filer to fraudulent lien liability including damages and fees thereunder. If the filer refuses and you must expunge and claim a fraudulent lien, you can then show the court that the filer had noticed the lis pendens was improper and knew exactly what it was costing you providing a concrete basis for an award. Then, any remaining fraud claims and/or damages can be resolved at trial under *Campbell* and *Diogu*. In egregious cases where the lis pendens are clearly fraudulent, some practitioners may even consider sanctions for abuse of process.

For further information on these developments, please contact [John Williamson](#).