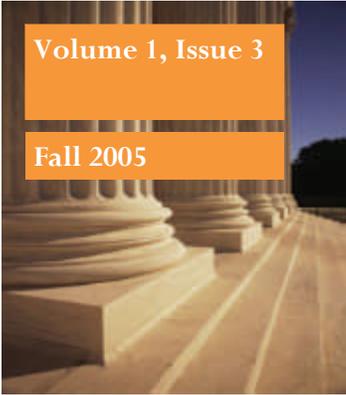




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Wagenseller Law Firm

- Full Service Business and Real Estate Law Firm
- Excellent Service in an efficient and cost-effective way
- Proven trial experience
- Results oriented
- Call us at (213) 996-8338 for any of your legal needs.

Real Estate Law 101: The Lis Pendens

The Notice of Pending Action, often called a *lis pendens*, is an often used but more often misunderstood, tool in real estate litigation. While this article cannot touch on every aspect of a *lis pendens*, it will explain the basic requirements.

A *lis pendens* is governed by the Code of Civil Procedure and a body of case law that has developed around the statute.

What is a Lis Pendens? “In California, a notice of lis pendens gives constructive notice that an action has been filed affecting title or right to possession of the real property described in the notice.” *Campbell v. Sup. Ct.* (2004) 132 Cal.App.4th 904. The *lis pendens* “clouds the title and effectively prevents the prop-

erty’s transfer until the litigation is resolved or the *lis pendens* is expunged.” *BGJ Assoc., LLC v. Sup. Ct.* (1999) 75 Cal.App.4th 952, 966-7.

The Evolution of Lis Pendens Law. The Court of Appeals once wrote that “we cannot ignore as judges what we know as lawyers—that the recording of a *lis pendens* is sometimes made not to prevent conveyance of property that is the subject of the lawsuit, but to coerce an opponent to settle regardless of the merits...” *Hilberg v. Sup. Ct.* (1989) 215 Cal.App.3d 539, 542. In 1992 the Legislature overhauled the *lis pendens* law, making it more difficult to “abuse” the *lis pendens* law. “In so doing, the Legislature continued the

historical trend of ‘restricting rather than broadening the application of the remedy.’” *Campbell, supra*.

The Requirements of a Lis Pendens. A *lis pendens* may be filed by any party in an action who asserts a ‘real property claim.’ C.C.P. §405.20. Section 405.4 defines a “Real property claim as ‘the cause or causes of action in a pleading which would, if meritorious, affect ... title to, or the right to possession of, specific real property.’” A dispute over ownership of the property is a real property claim. A dispute over a partnership interest (a personal property claim) in a partnership that owns real prop-

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Success: A Report On Our Results

We have had a number of successes this past quarter.

- We settled our lawsuit against a freight forwarding company in St. Louis on behalf of a warehouse owner for the full amount of the debt plus our attorneys fees. To add teeth to the settlement, we secured a **Stipulation of Judgment**, which allows us to enter judgment in our client’s

favor in the event that the company fails to make the promised payments.

- We obtained **judgment** on behalf of business park owner against a former telecom equipment tenant. We also applied for a **writ of execution** and are in the process of having the Sheriff levy on the tenant’s bank account.

- We recently brought a demurrer, asking the court to dismiss a complaint against our clients (multi-family property owners) for **reformation of deed, slander of title, breach of confidential relationship, quiet title, conspiracy and constructive trust**. A demurrer challenges the legal or factual sufficiency of a complaint. We argued that the law-

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Legal Update:

The Supreme Court of California recently struck down the use of pre-dispute jury trial waivers. While a party may waive a jury trial once he is sued and while a party may waive the entire judicial process (by agreeing to arbitration), a party may not enter into a contract in which the parties agree to a court trial only (i.e., a trial by judge rather than jury). The Court ruled that the Legislature must authorize such waivers and is best equipped to provide the appropriate safeguards. *Grafton Partners, L.P. v. Sup. Ct.* (2005) 36 Cal.4th 944.



Building a 'Truly Cohesive' Attorney-Client Team

It is important for both the client and the attorney to look at their relationship as a team endeavor. In *"The Five Dysfunctions of a Team"*, Patrick Lencioni addresses common team problems. While this business fable deals with a hypothetical management team at a software company, the five dysfunctions apply equally well to the attorney-client relationship. Below are the five dysfunctions and how they apply to an attorney's relationship with clients.

1. Absence of Trust

In an attorney-client relationship, trust is one of the more important elements of the relationship. Because our work is primarily strategic and analytical, it is sometimes difficult to evaluate the quality of your legal services. We seek to build trust by keeping you involved and informed at every step of the process.

2. Fear of Conflict

One of the hardest jobs of an attorney is disagreeing with a client. But it is also one of the

most critical aspects of a successful attorney-client team. Both the client and the attorney need to be able to butt heads. Disagreements over strategy and different outlooks on the merits of the case need to be fleshed out, sometimes forcefully. While this may make some uncomfortable, it is a necessary part of the team relationship.

3. Lack of Commitment

Lack of commitment is sometimes subtle. A client who wants to right a wrong but falls behind on his bills is an example. Outwardly the client is often vehement about forging ahead and fighting on every front. But true commitment comes from actions, not words. Lawyers' bills help gauge commitment—is the litigation more important than the money that it takes to try the case? For this reason we always try to inform our clients about the costs of fighting a lawsuit.

4. Avoidance of Accountability

Accountability is typically

straightforward in the litigation setting—you win, lose or draw. We are fully accountable for our work because, in the end, our clients, a judge or jury will hold us accountable.

5. Inattention to Results

Our mission statement is "Results-Oriented Legal Services" for a reason. While many lawyers are happy to engage in the process of litigation, we are results driven. Every step we take (or do not take) is intended to get us closer to the result we seek.

So what makes a successful team? Looking at the above factors in a positive light, Mr. Lencioni explains that a healthy and "truly cohesive" team behaves as follows: (1) They trust one another; (2) They engage in unfiltered conflict around ideas; (3) They commit to decisions and plans of action; (4) They hold one another accountable for delivering against those plans; and (5) They focus on the achievement of collective results. Those are our goals at WLF.

Real Estate 101: The Lis Pendens

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erty is not. There are a number of opinions which examine cases arising from joint ventures, fraudulent conveyances, community property and even the use of illegal drug proceeds in the purchase of the property. A claim that seeks an interest in real property merely for the purpose of securing a money damage judgment does not support the recording of a *lis pendens*. *Campbell, supra*. "It must be borne in mind that the true purpose of the *lis pendens* statute is to provide notice of pending litigation and

not to make plaintiffs secured creditors of defendants nor to provide plaintiff with additional leverage for negotiating purposes. *Id.*

Expunging a Lis Pendens. A court will expunge (i.e., remove) a *lis pendens* based on a claimant's failure to plead a real property claim or a claimant's failure to establish the probable validity of a real property claim. C.C.P. §405.30-405.32. It is the claimant (the person recording the *lis pendens*) who bears the burden of proving the probable validity of the real property claim. Moreover, even if the claim has prob-

able validity, the court can order the notice expunged nonetheless and require an undertaking instead. C.C.P. §405.33. The undertaking should be set in an amount intended to indemnify the claimant for all damages resulting from the expungement which the claimant may incur if the claimant prevails upon the real property claim.

The court shall award reasonable attorneys fees to the party prevailing on a motion to expunge unless the court finds that the other party acted with substantial justification. C.C.P. §405.38

Message from Laine Wagenseller...

As part of the Coach K/ Fuqua School of Business Conference on Leadership, I recently had the privilege of attending a Duke basketball practice with Coach K. Coach Krzyzewski has three national championships, numerous ACC championships and will be coaching the next Olympic team. Coach K stressed the need to have a **great sense of purpose in life**. Using that purpose, he noted that the team

defines its own successes and failures instead of worrying about polls, sportswriters and other teams. By focusing on their purpose, he ensures that "Duke does not beat Duke." (If someone else does, figure out why and don't let it happen again!) He expects his players to work hard, think hard and talk. Rather than using set plays, the team practices movements. Coach K gives his players freedom to mix and match those movements during a game.

Our mission at WLF is to provide results-oriented legal services. We do this by working hard, thinking hard and communicating with our clients. I am proud to highlight some of our successes in this edition of our newsletter. I also look forward to hearing from you about how we can improve our service so that you are getting excellent service.

Laine



Success: A Report on our Results (cont'd)

(Continued from page 1)

suit, which was based on an oral contract to convey real property, was barred by the statute of frauds and that the factual allegations of the complaint did not support the legal claims. **The court sustained (granted) our demurrer in its entirety.**

- This summer we settled a dispute between two partners in a **television production company**. The settlement avoided trial, resolved the ownership issues and allowed the company to continue operating.

- We also settled on favorable terms a claim by **General Electric Capital Corporation** against a client arising from two equipment leases.

Other matters in the works:

- Our client, a restaurateur, has been sued for **Americans With Disabilities Act** violations. Although the restaurant has handicapped parking, plaintiff claims the parking is insufficient (without saying why) and she was therefore denied access. Our investigation showed that this plaintiff and her attorney have brought over twenty

other ADA lawsuits against businesses all across the city.

- Laine Wagenseller, with his clients, recently met with the **City of Alhambra Police Chief** and two of his deputies. The Police Department expressed concerns about motorcycle gang and Mexican Mafia activity on Main Street in Alhambra, which the police mistakenly believed was related to our clients' nightclub and bar.

- We recently helped a real estate investor client complete the purchase of a 45 unit apartment building after problems arose with the Seller.

I am proud to highlight some of our successes in this edition of our newsletter. I also look forward to hearing from you about how we can improve our service so that you are getting excellent service.

Sidelines...

"Hope is not a strategy for success. Your life is too precious and important to be left to chance. Your greatest responsibility is to take command of your future and shape your destiny the way you want it, to do something wonderful with your life."

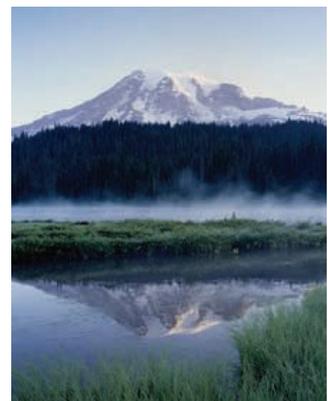
"Fears of failure and rejection are the greatest barriers to success. The fear of failure stops

people from even trying in the first place. The fear of rejection, the fear of hearing the word *no* actually paralyzes people. It causes them to make all kinds of elaborate excuses and justifications to avoid going out and talking to new people."

"Risk taking requires that you move out of your comfort zone with no guarantee of success. By taking calculated risks, you

eventually overcome your fears of failure and replace them with the thrill of accomplishment. Soon you become positively addicted to the sense of achievement that comes from taking chances and succeeding. You become more confident and competent as you move faster and faster toward your goals."

Brian Tracy, *Create Your Own Future*





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Results Oriented Legal Services

Wagenseller Law Firm is a full-service business and real estate law firm. Materials contained in this newsletter are for general information purposes and to permit you to learn more about the services that Wagenseller Law Firm offers its clients. These materials are not intended to constitute legal advice relating to any specific matter and do not create an attorney-client relationship. Please consult Wagenseller Law Firm for legal advice regarding specific matters of concern.

News and Happenings...

- Laine Wagenseller was recently quoted on **National Public Radio's "All Things Considered"** in a radio story on the Federalist Society, a conservative legal group in the news during Judge Robert's confirmation to the United States Supreme Court.
- On September 30, Mr. Wagenseller attended a reception at the Buffalo Club with **Governor Schwarzenegger** where the Governor spoke about the ballot initiatives he is promoting.
- Mr. Wagenseller participated in the **Coach K/Fuqua School of Business "Conference on Leadership"** at Duke University in mid-October. The Conference brings together business leaders from across the country.

Speakers this year included Keith Reinhard (Chairman, DDB Worldwide), Myles Brand (President, NCAA), and James Quigley (CEO, Deloitte & Touche USA), along with Coach K.

- Mr. Wagenseller attended the **Urban Land Institute's** Fall Convention in Los Angeles from November 1-4. ULI brings together real estate developers and other real estate professionals from around the country. ULI's annual convention featured Hernando de Soto, author of *The Mystery of Capital*, and Magic Johnson, who is focusing on real estate development in inner city neighborhoods. The conference featured in-depth studies of various developments in Los Ange-

les as well as updates on Real Estate Finance.

- Is There a Housing Bubble? Laine Wagenseller attended the **Asian Business League's Real Estate Seminar 2005** with Jack Kyser.
- Mr. Wagenseller also joined the **USC Marshall School of Business** for its evening at the Stadium Club with Frank McCourt, owner of the Dodgers.
- The Los Angeles County Bar Association recently put on a talk entitled **"Problems with Lis Pendens Law,"** which Mr. Wagenseller attended. See *related article inside*.
- Visit our newly organized website: www.wagensellerlaw.com

