

# Should a Buyer of Real Property Be Concerned If the Seller Is Involved with Litigation?

Yes. When acquiring real property, it is critical for any buyer to adequately review the condition of title and force the seller to remove any liens or other encumbrances that could have a negative impact on the buyer's ownership interest and intended use of the property. Litigation involving the seller can potentially become an encumbrance on title to real property under the following circumstances: (1) a money judgment is rendered by a court against the seller and docketed with the applicable county clerk of courts; or (2) the seller is involved in pending litigation where the relief being sought might confirm or change interests in the property and a *lis pendens* is recorded in the applicable register of deeds office.

## Judgment Liens

Once a money judgment is docketed with a county clerk of courts, it becomes a lien on all real property owned or acquired by the judgment debtor for a period of ten years thereafter.<sup>1</sup> The judgment lien will attach to any of the debtor's real property located in the county where the judgment is originally docketed or in those counties where a certified copy of the judgment transcript is docketed. In order to remove the judgment lien from title, the judgment creditor must issue a satisfaction of judgment upon receipt of the payoff that complies with specific statutory provisions. If the creditor cannot be located, a payoff of the judgment can be made to the applicable clerk of courts.<sup>2</sup> Buyers of real property should confirm that any title search of the property is broad enough to uncover all judgments against persons or entities with the same or a similar name as the seller.

## Pending Litigation

In any lawsuit or other action where relief is demanded that affects real property and such relief might confirm or change interests in the real property, a *lis pendens* will be recorded in the office of the register of deeds of each county where any part of said real property is located.<sup>3</sup> The recording of a *lis pendens* against real property is considered constructive notice to potential buyers, lenders and other parties that a lawsuit exists where the real property's title is in

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question. After the *lis pendens* is recorded, any party that subsequently purchases, or acquires any other interest in, the real property described in the *lis pendens* will be bound by the proceedings in the action to the same extent and in the same manner as if it were an actual party to the lawsuit.<sup>4</sup> The *lis pendens* will remain on title as long as there are pending proceedings in the action, including appellate proceedings, and the *lis pendens* is properly discharged.<sup>5</sup>

In connection with litigation involving the seller of real property, so long as a *lis pendens* has not been filed against the property, and the action has not been reduced to a money judgment, as of the time of closing, a buyer can proceed with the acquisition of the property knowing that its ownership rights will not be subject to the eventual outcome of the litigation. Any one of Reinhart's experienced real estate attorneys can assist both buyers and sellers of real property in resolving litigation and other issues affecting their transaction.

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<sup>1</sup>Wis. Stat. § 806.15(1)

<sup>2</sup>Wis. Stat. § 806.19(3)

<sup>3</sup>Wis. Stat. § 840.10

<sup>4</sup>*Id.*

<sup>5</sup>*Zweber v. Melar Ltd., Inc.*, 276 Wis. 2d 156, 687 N.W.2d 818

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