Fidelity National Title

Red Flags in Escrow and Title

A **"RED FLAG"** is a signal to pay attention! Below are some of the items which may cause delays or other problems within a transaction and must be addressed well before the closing.

- ⛔ Bankruptcies
- ⛔ Business trusts
- ⛔ Clearing liens and judgments, including child or spousal support liens
- ⛔ Encroachment or off record easements
- ⛔ Establishing fact of death–joint tenancy Family trusts
- ⛔ Foreclosures
- ⛔ Physical inspection results–Encroachment, off-record easements
- ⛔ Probates
- ⛔ Power of Attorney–Use of, proper execution
- ⛔ Proper execution of documents
- ⛔ Proper jurats, notary seals
- ⛔ Recent construction
- ⛔ Transfers or loans involving corporations or partnerships
- ⛔ Last minute change in buyers
- ⛔ Last minute change in type of title insurance coverage

RED FLAG EXAMPLES

TAXES: These are usually standard, showing the status of the current tax year.
⛔ Postponed property taxes is a program put on by the state for senior citizens. It allows the owner to postpone the taxes until the property is sold or refinanced. The owner applies to the state, and the state provides "checks" that the owner uses to pay the taxes. The reason this is a red flag is because a demand will need to be ordered from the state by escrow in order to pay off the postponed taxes. It may take up to two weeks to get a demand.

CC&R'S: These are standard. The CC&R's should be provided to the buyer by escrow. The buyer should read these thoroughly, especially if improvements to the property are contemplated.
⛔ Some CC&R's prohibit certain types of improvements.

ENCROACHEMENTS: Sometimes a structure (commonly a fence or driveway) encroaches upon a property. This usually means that a client will have to take the property subject to the encroachment. Contact your title officer if you see encroachment language in your prelim.
⛔ The lender will usually not want to lend on a property where encroachments exist. In some circumstances, an endorsement to the lender's policy (usually with an extra charge) can allow the lender to close. These are determined on a case-by-case basis. Again, contact your title officer.

EASEMENTS: These are also standard. Most easements in newer subdivisions (20 years or less) are contained in the street. Some subdivisions have nonexclusive easements over portions of the property for such things as maintenance of side yards, access to common areas (like golf courses), etc.
⛔ If improvements are contemplated (such as construction of a pool or spa for example), then the buyer should request the easements be plotted on a map to determine that there will not be any interference to contemplated Improvements. However, you should be aware that easements are very difficult to get removed, and your client may be better off with another property if an easement interferes with his future plans for the property.

AGREEMENTS: These commonly take the form of road maintenance agreements, mutual easement agreements (like a shared driveway) or improvement agreements, and will bind the owner to certain actions. A copy of the agreement should be requested from title and provided to the buyer. It is the buyer's responsibility to contact their own counsel if they do not understand how the agreement would affect them.

TRUST DEEDS: These are common. Escrow will order a demand from the lender(s) which will allow the title company to pay off the existing loan(s) using the proceeds from the new buyer's loan (or proceeds if all cash).
⛔ Watch out for old trust deeds from a previous owner (or sometimes the current owner if he has refinanced). If you find a trust deed listed that has already been paid, or that looks like it was taken out by a previous owner, call your title officer immediately. He will research the trust deed, and take the necessary steps to either remove it from the public record (by working with escrow to get release documents) or by acquiring an "indemnity" from the title company who paid off the old loan. Old trust deeds with private party beneficiaries (individual people acting as lender, such as an old seller carry-back) are difficult to get removed, especially if several years have gone by since the loan has been paid off. A bond will sometimes be necessary in order to clear title of an old trust deed. These bonds must be covering twice the face value of the deed of trust, and will cost upwards from 1% of the bond amount (usually around 2 or 3 percent, more for higher risk bonds), depending on how much supporting documentation is provided to the bonding company. Note: If you have a client/buyer who is getting financing from the seller, or any individual, advise them to contact you or their title officer when the loan is being paid off. The release documents are much easier to get now rather than in a few years when the lender may no longer be around.

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NOTICE OF VIOLATION: These will sometimes be recorded by the fire department, the health department or the local zoning enforcement division in situations where the property violates a local statute.

⛔ These are always a red flag. The lender will not accept these conditions. The violation will have to be eliminated and the local enforcement agency will have to issue a release before closing. Escrow (or the seller or the seller's representative) will usually have to deal directly with the appropriate agency to resolve these types of issues.

COURT ORDERS / JUDGMENTS: These are not a standard item. The most common type to show on a PR (Preliminary Report) is support judgments. These are issued by the courts when child/spousal support is owed by the party named. (See "Statement of Information")

⛔ Any order/judgment is a red flag. Support judgments can take up to six weeks to get a demand and release from the creditor (usually the district attorney's office). If you see an order or judgment, contact escrow immediately to verify that the demand has been ordered.

BANKRUPTCY: While not unusual, bankruptcies are not standard.

⛔ All open bankruptcies require the debtor to get permission from the court to sell or encumber an asset (the home) or to take on new debt. Chapter 7 and 13 bankruptcies against the seller are the most common found in a sale situation. A letter from the bankruptcy trustee will be required to close escrow. The trustee will sometimes require that a payment be made to the court at close. We sometimes find a Chapter 13 against a buyer, which will also require a letter from the trustee allowing the debtor to take on more debt. An open Chapter 7 against the buyer is rare, and the buyer probably cannot get a loan as long as he is in a Chapter 7. (See "Statement of Information").
NOTE: Chapter 7 is a complete washout of dischargeable debt, Chapter 13 is a reorganization of debt and Chapter 11 is a reorganization of debt for a company or corporation.

NOTICE OF PENDING ACTION: This is also known as a "lis pendens."

⛔ This is a big red flag. This means that someone has a lawsuit pending that may affect the title to the property. These are often found in acrimonious divorce situations. A demand (the aggressing party usually wants money before releasing) and withdrawal (a "withdrawal of lis pendens" is a legal document that must be recorded to release the lis pendens) will be required.

STATEMENT OF INFORMATION: Also known as a statement of facts, statement of identity, or an SI. This required document will be provided to the parties by escrow. It asks for information about the parties such as social security number, residence history, marital history, job history, aliases, etc. Please fill this out as completely as possible. The SI allows the company to eliminate things recorded in the GI (General Index) against the name (as opposed to the property) such as tax liens, judgments, welfare liens, support liens and lawsuits that may be filed against people that have the same name as you. These types of liens attach automatically to any real property owned by the debtor, and therefore make the property liable for any payment due under the lien.

⛔ If you have a common name (for example: Smith, Johnson, Garcia, Martinez, Lee, etc.) it is important that the company receive the completed SI promptly in order to "clear" these items. Sometimes you may be unaware that a lien exists. More often, you may have resolved the situation but had never gotten the proper release documents recorded in order to remove it from the public record. We cannot close a file with unresolved liens against a seller. (There are some circumstances when a deal can still be closed when there is an unresolved lien against a buyer.) Contact your title officer if you find that this situation exists.
NOTE: If you ever find yourself in a situation where you need to record an abstract of judgment against someone who owes you money, it may be wise to record the abstract in any county where the debtor owns or may own property. This will help protect you if the debtor owns or purchases property out of the immediate area. Consult your attorney if you are not sure.

If you find something on your prelim that is not listed here, it is probably a red flag and you should contact your title officer. He (or she) will be happy to provide you with copies of recorded documents and advise you as to what is needed in order to remove the item (if necessary). Sometimes, though, removing an item is so time consuming, or costly, or both, that it becomes a decision on the part of your buyer. We cannot advise you regarding the risk in making such a decision. You should contact your own counsel if you have these types of concerns.