

IDENTIFYING RED FLAGS IN TITLE & ESCROW



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 reference point.

- 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: Usually show status of the current tax year

RED FLAG: Postponed property taxes. This 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 Possible problem 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 2 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 the CC&R’s thoroughly, especially if improvements to the property are contemplated.

RED FLAG: Some CC&R’s prohibit certain types of improvements.

EASEMENTS: These are also pretty standard. Most easements in newer subdivisions (20 years or less) are contained in the street. Some subdivisions have non exclusive easements over portions of the property for such things as maintenance of side yards, access to common areas (like golf courses), etc.

RED FLAG: If improvements are contemplated (such as construction of a pool or spa for example), then the buyer should request the easement 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:

RED FLAG: 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 proceeds from the new buyer’s loan (or proceeds if all cash).

RED FLAG: Watch out for old trust deeds from previous owners (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 lenders, 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 of 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.

Red Flag Examples *cont'd*

ENCROACHMENTS: *We will sometimes find that a structure (commonly a fence or driveway) encroaches upon our property. This means that your client will have to take the property subject to the encroachment. Contact your title officer if you see encroachment language in your preliminary report.*

RED FLAG: The lender will usually not want to lend on a property where encroachment exists. 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.

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.*

RED FLAG: These are always red flags. 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 is support judgments. These are issued by the courts when child/spousal support is owed by the party named (See "Statement of Information")*

RED FLAG: Any order/judgment is a red flag. Support judgments can take up to 6 weeks to get 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.*

RED FLAG: All open bankruptcies require the debtor to get permission from the court to sell or encumber as asset (the home) or to take on new debt. Chapter 7 and 13 bankruptcies against the seller are the most common we will find 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 are rare, and the buyer probably cannot get a loan as long as he is in chapter 7. (See "Statement of Information"). FYI: Chapter 7 is a complete washout of dischargeable debt. Chapter 13 is a reorganization of debt. Chapter 11 is a reorganization of debt for a company or corporation.

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

RED FLAG: This is a big red flag. This means that someone has a lawsuit pending that may affect the title to the property. We often find these 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 before closing.

STATEMENT OF INFORMATION: *Also known as a statement of identity, or an SI. This 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 have your clients fill out as completely as possible. It allows us to eliminate things that are recorded in the General Index (GI) that are recorded 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 your clients. If the named debtor is the owner of the property, then the creditor may take steps to enforce the lien by seeking a sale of the land.*

RED FLAG: If your client has a common name (for example: Smith, Johnson, Garcia, Martinez, Lee, etc) it is important that we receive the completed SI promptly in order to "clear" your client. More often, the client may have resolved the situation but had never gotten the proper release documents recorded in order to remove 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.

Remarks: If you find something on the preliminary report that is not listed here, please contact your Chicago Title Escrow Officer immediately for consultation. It is always best to detect possible problems prior to closing in order to avoid any delays. ©Copyright 2020 Chicago Title Company. All Rights Reserved.