



Fidelity National Title

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every day.

Red Flags

In the Title & Escrow Process

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 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**
- **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. **RED FLAG:** 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.

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

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).

RED FLAG: 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. 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. 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.

ENCROACHMENTS: 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. **RED FLAG:** 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. **RED FLAG:** 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.

