



IT'S ALL IN THE DETAILS SPOTTING RED FLAGS ON THE PRELIMINARY REPORT

PROPERTY TAX: These are usually standard, showing the status of the current tax year. Postponed property taxes are a red flag because escrow will need to order a demand from the state in order to pay off the postponed taxes. It may take up to 2 weeks to get a demand. Postponed property taxes are a state program for senior citizens. It allows the owner to postpone property taxes until the property is sold or refinanced.

CC&Rs: These are standard. CC&Rs should be provided to the buyer by escrow. CC&Rs can be a red flag if they prohibit certain types of improvements. The buyer should read these thoroughly, especially if improvements are being contemplated.

EASEMENTS: These are also pretty 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, the buyer should request plotted easements. This will help determine if the easement will interfere with the possible improvements. Keep in mind easements are very difficult to remove, and the client may need to change their plans for improvements or find a different property to purchase.

AGREEMENTS: These commonly take the form of road maintenance agreements, mutual easement agreements, such as a shared driveway, or improvement agreements and bind the owner to certain actions. A copy of the agreement should be requested from title for the buyer to review. The buyer has the responsibility to contact an attorney to make sure they understand how the agreement could 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) before escrow closes. Look for trust deeds from a previous owner or the current owner if the original loan was refinanced.

If a trust deed is found and it was paid or taken out by a previous owner, call the title officer immediately. They will research the trust deed and take the necessary steps to either remove it from the public record or acquire an "indemnity" from the title company that paid off the loan.

Trust deeds with private party beneficiaries, individual people acting as a lender, are difficult to get removed. Sometimes a bond is necessary to clear a trust deed from title. The bond must cover twice the face value of the the trust deed. Bonds typically cost around 2 or 3 percent of the bond amount depending on the supporting documentation provided to the bonding company.

Note: If a client/buyer is being financed by the seller or an individual, they should contact the title officer when the loan is being paid off. The release documents will be easier to obtain at the time of payoff. If the buyer waits to get the release documents, the individual/lender may have relocated, be unavailable or cannot be found.

ENCROACHMENTS: Sometimes a structure, commonly a fence or driveway, encroaches on the property. This usually means that the buyer will have to take the property subject to the encroachment. Contact the title officer if there is 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 an extra cost, can allow the lender to close. These are determined on a case by case basis.



Lawyers Title



NOTICE OF VIOLATION: These are always a red flag. 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.

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 types are 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. It can take up to 6 weeks to get a demand and release for support judgments 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 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. Sometimes a Chapter 13 against a buyer will be found, 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. A buyer probably will not be able get a loan as long as they are in an open Chapter 7. (See "Statement of Information")

Note: Chapter 7 is a complete discharge of certain types of 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 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 and withdrawal, 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 Facts, 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 clients fill this out as completely as possible. It allows the title company to eliminate things 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 against someone else with the same or similar name as the client. 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 a client has a common name, for example: Smith, Johnson, Garcia, Martinez, Lee, etc, it is important the title company receive a completed SI as quickly as possible in order to "clear" the client. Sometimes the client is unaware that a lien may exist. More often, the client may have resolved the situation but never received and/or recorded the proper release documents to remove the lien from the public record. The title company cannot close a file with unresolved liens against a seller. In some circumstances, escrow can still be closed if there is an unresolved lien against a buyer. Contact the title officer if this situation exists.

FYI: *If an abstract of judgment needs to be recorded against a debtor, contact an attorney for advice about the specific situation and the abstract should be recorded in any county where the debtor owns, may own or may purchase property. If something on the prelim is not listed here, contact the title officer. They can usually answer any questions and provide options available to close the transaction. However, a title officer cannot advise clients which option they should choose or the risk associated with that choice. The client should contact an attorney, if they have concerns, have questions regarding risk, or would like advice based on their specific situation.*

Please ask us about our LiveLOOK technology!

When your Preliminary Title Report is delivered via LiveLOOK, you will find an easy-to-view SUMMARY PAGE that features red-flagged items so you can quickly recognize impediments to close.