

# ESCROW RED FLAGS



A “red flag” is a signal to pay attention! These situations may cause delays or other problems within an escrow and must be addressed well before the escrow is expected to close. The Preliminary Report or “Commitment of Title Insurance” will reveal many red flags, so the escrow officer will review it carefully. Agents and parties to the transaction should also review the preliminary report for situations which could cause delays. Many life changes cause a “red flag” situation, as can other outside influences. Here are a few things to watch for:

- Bankruptcies
- Business trusts
- Clearing liens and judgments, including child or spousal support liens
- Deposits made by a third party on behalf of the buyer
- Encroachment or off-record easements
- Family trusts
- Foreclosures
- Home improvement loans (HERO), including solar liens
- Last minute change in buyers
- Last minute change in type of title insurance coverage
- Probates
- Proper execution of documents
- Proper jurats, notary seals
- Recent construction

- Transfers or loans involving corporations or partnerships
- Sellers or buyers who are outside of the United States (Foreign Persons)

## RED FLAG EXAMPLES

- 1. The buyer or seller has been involved in a bankruptcy:** If the bankruptcy is still pending, obtain the contact information for the attorney. Escrow cannot close until the property is released from any pending bankruptcy proceedings.
- 2. The seller or buyer intends the property in question to be part of a tax-deferred exchange:** To prevent delays in closing this transaction, obtain the contact information for the tax-deferred exchange accommodator. Your escrow officer will work closely with the exchange to make sure all state and federal tax guidelines are followed.
- 3. Your clients do not speak English:** Our diverse population includes many buyers, borrowers and sellers who do not speak English or for whom English is a second language. If you do not speak the language spoken by your clients, seek a qualified and reliable interpreter. If you plan to use an interpreter, inform your escrow officer so that appropriate accommodations may be made for correspondence and the signing appointment.

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# ESCROW RED FLAGS, CONT.

**4. The property is being sold because of a divorce:**

Is the divorce final and are the appropriate documents available? Has one spouse deeded the property to the other? If not, both the husband and wife will be required to sign all listing and escrow documents. Will two separate checks be required for proceeds? Do you have current addresses and other contact information for both parties?

**5. Sellers are recently married:** Is the new spouse going to be a seller in this transaction, or will that spouse be required to sign a quitclaim deed conveying his or her community property interest in the property to the other spouse?

**6. One of the owners is recently deceased:** Many red flag situations arise from the death of a property owner. If this is a sale, appropriate documents must be prepared in order to close the escrow. Is there a probate proceeding on the estate of the deceased? If so, a court order confirming the sale of the property will be needed prior to the close of escrow. Was a family trust established prior to the death

of the seller? If so, you need to know who the Successor Trustee is in order to obtain proper signatures. Involve your escrow officer early and save frustration for all.

**7. One of the principals is using a Power of Attorney:**

Is the Power of Attorney legal and binding? The document should have been recorded in the county and state where the property is located, and should be less than two years old. Provide a copy of the document to your escrow officer as soon as possible.

**8. Buyers want to hold title in the name of a trust:**

The new lender may not allow this type of vesting, so be sure to raise this issue as soon as possible.

**9. Seller lives in another state or is selling a property other than the principal residence:**

Some states (such as California) require tax withholding on the sale of certain properties. Check with your escrow officer immediately to discuss special tax reporting situations.

*Information deemed reliable, but not guaranteed.*

