A QUICK GUIDE TO SPOT RED FLAGS ON YOUR PRELIMINARY TITLE REPORT

MONARCH
TITLE COMPANY

The Preliminary Report frequently uncovers specific issues that may act as warning signs, potentially leading to delays in closing escrow. Here are some red flag items to be aware of on your Preliminary Report. Don't hesitate to reach out to your escrow officer for clarification.

TAXES

These are standard, and show the status of the current tax year.

1. Postponed Property Taxes. This initiative, established by the State of California, assists senior citizens, as well as those who are blind or disabled. Through this program, the State covers the property taxes for the homeowner under a deferral program. Escrow must issue a demand to reimburse the State of California, ensuring all deferred property taxes are fully paid off. These demands can take up to 2 weeks to receive from the assessor.

2. A recorded power to sell. This indicates that the County has initiated foreclosure proceedings due to unpaid back taxes on a property. It is essential to confirm that these taxes have not been auctioned off when such a document appears in the property's chain of title.

CC&RS

These are also standard. The Covenants, Conditions, & Restrictions (CC&Rs) should be given to the buyer by escrow. It is important for the buyer to carefully read these documents, particularly if they are considering making improvements to the property. In cases of a condomimium, these are bylaws for the complex.

CC&Rs can prohibit certain types of improvements, and in condos, may even prohibit specific types of pets.

EASEMENTS

These are standard. The most frequent type of easement allows Public Utility companies access for the transmission of power, water, gas, etc. Additionally, they enable Utility Companies to access and maintain their utilities on the property. Most easements for developments built in the last 30 years are contained in the street. Other easements grant access rights to multiple owners for various purposes, such as entry, exit, landscaping, common areas, etc.

Caution is advised if property improvements are planned (like building a pool or spa). In such cases, the buyer should ask for the easements to be plotted on a map to ensure they don't interfere with planned developments. At times, a survey might be necessary to precisely locate the easements. Be aware, removing easements can be a challenging process.

COVENANT AND AGREEMENTS

These are common. They usually arise from a mutual understanding between a city authority and the property owner when a development or improvement is being made to the property. These Agreements obligate the current owner and any future owners to specific commitments. It's important for the buyer to review a copy of the Covenant and Agreement. If the buyer is unclear about the impact of these documents, they should seek advice from their own legal counsel.

Some Covenants and Agreements may include requirements for permits. While it's possible to terminate certain Covenants and Agreements with the city, the procedure can be complex.

AGREEMENTS

They usually pertain to Road Maintenance Agreements or mutual Easement Agreements. Such Agreements obligate both the current and future owners to specific actions. Buyers should thoroughly read a copy of the Agreement. It is the responsibility of the buyer to consult their own legal counsel if there's any uncertainty about the impact of the agreement on them.

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Some Agreements outline the costs and responsibilities related to the upkeep of the Easement, which the buyer needs to be mindful of.

ENCROACHMENTS

These are not as common. The title company might find an existing encroachment, such as a fence or driveway, that extends onto another person's property. Typically, this would mean that the title insurance policy will be subject to this existing encroachment.

In some cases, a lender may refuse to finance a property with an existing encroachment unless they receive an additional endorsement that provides them coverage against the potential forced removal of the encroachment. These endorsements are granted on an individual basis, depending on the nature of the encroachment.

TRUST DEEDS

These are common. Escow will order a demand from the lender(s) so that title can pay off any existing loan(s) with the proceeds of the sale.

Existing Deeds of Trust from previous owners may still be recorded and not properly reconveyed. In such instances, additional investigation is necessary to determine whether the debt was settled but simply not reconveyed. If this is the case, an indemnity might need to be obtained from the previous title company. It's often the case that although a previous owner paid off the Deed of Trust, a formal reconveyance was not issued. To remove the Deed of Trust from public records as an active debt, securing a bond from a bonding company might be required. According to California Civil Code, these bonds should cover double the value of the Deed of Trust. The cost for these bonds can range from 1% to 3%, varying based on the specific requirements of the bonding company.

NOTICE OF VIOLATION

These are not as common. The City of County where the property is located may record these for various issues with the property, such as sub-standard conditions due to a non-permitted addition. Other reasons may include abatement procedures like weed removal, or a violation of the subdivision map-act.

Violations are always a red flag. Most lenders will not finance with these outstanding conditions. A release is required from whichever governmental agency recorded the violation. Escrow, the seller, or the seller's agent will have to work directly with the appropriate agency to resolve these.

NOTICE OF PENDING ACTION

This is some sort of court action against the property, also commonly known as a Lis Pendens.

A Lis Pendens indicates that there is an ongoing lawsuit related to the property. It's necessary to have a formal demand and withdrawal of the pending action recorded before escrow can be closed. In some cases, an order to expunge the Lis Pendens might be required to resolve the issue.

JUDGMENTS

Often, these are for monetary law suits filed by a creditor and at times it can be for support fees due to a former spouse for child support or spousal support.

Judgments will need to be remedied during the closing process for a lender to finance. Escrow must obtain a demand and release. The process can sometimes be very lengthy.

BANKRUPTCY

Bankruptcies are uncommon.

Active bankruptcies require the debtor obtaining court approval to sell or place a lien on the property, or to incur new debt. Chapter 7 and Chapter 13 bankruptcies are most frequently encountered in transactions. To close escrow, an authorization from the bankruptcy trustee is essential. Occasionally, the trustee may demand a payment to the court at the time of closing. Chapter 7 bankruptcy involves the total elimination of dischargeable debts, whereas Chapter 13 is a debt reorganization, usually involving a structured repayment plan.

These are some of the most important red flags to look out for on a preliminary title report. If you're not sure about a particular item, don't hesitate to reach out to your Monarch Title sales executive to assist!

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