

IDENTIFYING RED FLAGS ON PRELIMINARY REPORT { PART 3 }

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 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 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 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 has never secured the proper release documents to record 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 USA National Title Officer immediately for consultation. It is always best to detect possible problems prior to closing in order to avoid any delays.



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