



CHICAGO TITLE

Preliminary Reports: Item Info & Potential Problems

TAXES: These are usually standard, showing the status of the current tax year.

POSSIBLE PROBLEM: Postponed property taxes. This 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 Possible problem is because a demand will need to be ordered from the state by escrow in order to pay off the postponed taxes. It may take up to 2 weeks to get a demand.

CC&R's: These are standard. The CC&R's should be provided to the buyer. The buyer should read these thoroughly, especially if improvements to the property are contemplated.

POSSIBLE PROBLEM: Some CC&R's prohibit certain types of improvements.

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.

POSSIBLE PROBLEM: If improvements are contemplated (such as construction of a pool or spa for example), then the buyer should request the easement 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.

FORECLOSURES: Foreclosures are not standard but are not unusual. Holders of a right to sell under a deed of trust against a property may foreclose upon default of the terms of said deed of trust. Similarly, if after a property has been tax defaulted for several years, the tax collector will publish a notice of power and intent to sell.

POSSIBLE PROBLEMS: Creditors and tax collectors that foreclose upon encumbrances and liens that are senior to your interest can take title to the property without being subject to your subsequent interest. A trustee's deed has a conclusive presumption that the sale has been conducted regularly and fairly. A tax deed is also conclusively presumed to be valid in favor of the grantee that all the procedures for assessment and sale have been taken properly. Therefore, a demand must be secured to pay the amount owed and to obtain a release.

SURVEY: Survey requirements are common for certain types of extended coverage.

POSSIBLE PROBLEMS: For extended coverage, an ALTA/ACSM survey must be provided to the title company for review. These surveys require additional time and expense. Sufficient time and resources should be allotted to obtain these surveys.

AGREEMENTS: These commonly take the form of road maintenance agreements, mutual easement agreements (like a shared driveway) or improvement agreements, and will bind the owner to certain actions. A copy of the agreement should be requested from title, and provided to the buyer. It is the buyer's responsibility to contact their own counsel if they do not understand how the agreement would 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) using proceeds from the new buyer's loan (or proceeds if all cash).

POSSIBLE PROBLEM: Watch out for old trust deeds from previous owners (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. He will research the trust deed, and take the necessary steps to either remove it from the public record (by working with escrow to get release documents) or by acquiring an "indemnity" from the title company who paid off the old loan. Old trust deeds with private party beneficiaries (individual people acting as lenders, 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. A bond will sometimes be necessary in order to clear title of an old trust deed. These bonds must be covering twice the face value of the deed of trust, and will cost upwards of 1% of the bond amount (usually around 2 or 3 percent, more for higher risk bonds), depending on how much supporting documentation is provided to the bonding company. 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: We will sometimes find that a structure (commonly a fence or driveway) encroaches upon our property. This means that your client will have to take the property subject to the encroachment. Contact your title officer if you see encroachment language in your prelim.

POSSIBLE PROBLEM: The lender will usually not want to lend on a property where encroachment exists. 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.



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NOTICE OF VIOLATION: 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.

 **POSSIBLE PROBLEM:** These are always red flags. 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 type to show on a PR is support judgments. These are issued by the courts when child/spousal support is owed by the party named (See "Statement of Information"). A judgment lien is created by recording an abstract of the money judgment in the county recorder's office of the county where the real property is located. Upon recording, the judgment lien attaches to all of the debtor's real property in the county.

 **POSSIBLE PROBLEM:** Any order/judgment is a red flag. Support judgments can take up to 6 weeks to get demand and release 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.

 **POSSIBLE PROBLEM:** 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.

LLC REQUIREMENTS: When a limited liability company is involved in the transaction, the title company will require the filed articles of organization, the current list of names of the LLC members required to be maintained under Corp. Code section 17058, the operating agreement, showing of good standing, etc.

 **POSSIBLE PROBLEMS:** The foregoing documents are required for the title company to verify the limited liability company has the legal standing to enter into the transaction and to verify whose authority under which terms is required to complete the transaction. Without the foregoing documents, the transaction can be delayed or the closing will be impeded.

NOTICE OF PENDING ACTION: This is also known as a "lis pendens."

 **POSSIBLE PROBLEM:** 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 (the aggressing party usually wants money before releasing) and 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 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.

 **POSSIBLE PROBLEM:** 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 had never gotten the proper release documents recorded 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. If you find something on the prelim that is not listed here, it is probably a red flag and you should contact me. I will be happy to provide you with copies of recorded documents and advise you as to what is needed in order to remove the item (if necessary). Sometimes, though, removing an item is so time consuming, or costly, or both, that it becomes a decision for your buyer. We cannot advise you or your clients regarding the risk of making such a decision. They should contact their own counsel if they have these types of concerns.

TAX LIENS: Tax liens are not standard but are not unusual. Unpaid taxes become tax liens upon the recording of a certificate or notice by the federal, state, county, or city agency.

 **POSSIBLE PROBLEMS:** Generally, tax liens have priority only from the date they are recorded and become liens on the property. However, there are some instances when a tax lien, such as an ad valorem tax lien, has priority over prior recorded or perfected interests. Other instances where subsequent tax liens can have priority over prior recorded interests are supplemental taxes, which relate back to the date the change of ownership occurs or the date the new construction is completed to assess the value of the property. Once tax liens are recorded, they are enforceable against purchasers from the taxpayers and subsequent private lenders. Therefore, a demand must be secured to pay the amount owed and to obtain a release.



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