

WARNING: This information is intended for internal reference by employees of LandAmerica Financial Group, its subsidiaries, affiliates and title agents (collectively called the "LandAmerica Family"). Distribution of this internal document to anyone outside of the "LandAmerica Family" is a violation of company policy. If you are not an employee of the LandAmerica Family, DO NOT RELY ON THIS INFORMATION



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. Many life changes cause a "red flag" situation, as can other outside influences. Here are a few things to watch for:

- Ⓡ Probates
- Ⓡ Bankruptcies
- Ⓡ Foreclosures
- Ⓡ Family trusts
- Ⓡ Business trusts
- Ⓡ Recent construction
- Ⓡ Encroachment or off record easements
- Ⓡ Clearing liens, judgments, including child or spousal support liens
- Ⓡ Proper execution of documents
- Ⓡ Proper jurats, notary seals
- Ⓡ Transfers or loans involving corporations or partnerships
- Ⓡ Last minute change in buyers
- Ⓡ Last minute change in type of title insurance coverage

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 company 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.

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 probate proceeding on the estate of the deceased? 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.

10. Uninsured Deed, Mortgage or Deed of Trust

Since real estate transactions are rarely closed without title insurance, **UNINSURED DOCUMENTS REQUIRE SPECIAL ATTENTION** and inquiry into their authenticity. The following should be checked: (1) the spelling of the parties' names, since a typical feature of forgeries is the misspelling of names; (2) the grantor's signature as compared with prior recorded documents; (3) the affidavit of value or deed to determine whether consideration was given for the deed and, if not, why not, and (4) the status of the notary through the Secretary of State's Office (if the notary is not registered, the title should not be insured). In proper cases, the notary and/or grantor named in the document can also be called to verify that the transfer was genuine.

11. No Existing Deed of Trust or Mortgage

In this type of transaction, the buyer presumably paid cash and did not need new financing to acquire the property. In today's economy, the absence of new financing is so rare that the possibility of forgery should be considered and an appropriate investigation made.

12. Recent Release of Mortgage/Deed of Trust Independent of Any Real Estate Transaction

To increase the apparent equity in property, a forger will place on record a forged release of a mortgage or reconveyance of a deed of trust. Such releases usually occur independent of any real estate transaction and may be accompanied by a substitution of trustee. There will obviously have been no funds sent to the existing mortgagee/beneficiary. Shortly after recording the release, a new loan is sought or the property is sold. This situation leaves the title insurer to pay off the mortgagee/beneficiary of the "released" lien following the default of its loan.

13. Last Minute Ownership Changes

In transactions in which only a loan policy is requested, a deed may be tendered just prior to closing to change the ownership of the property either by conveying to new parties or making changes among co-tenants or partners. Many times this uninsured deed (being created in our closing) is forged. It is especially important in such cases to verify the identity of the parties, preferably by picture identification.

14. Rush Closing

Any excessive demand for speed should be regarded with suspicion. The forger's plan is to attempt to create immediate deadlines in order to prevent the closer from making otherwise prudent inquiries and obtaining needed verifications.

15. Subordination Agreement

Extreme caution should be exercised any time the title report shows an existing loan and the borrower supplies us directly with a Subordination Agreement subordinating that loan to a new loan. This is particularly troublesome if the second loan results in the property being over-encumbered.

16. Hard Money Lender

One of the reasons we are reluctant to handle transactions involving hard money lenders is because such transactions often involve forgeries by which the "borrower" obtains a large sum of cash and promptly defaults, leaving the title insurer to pay-off the lender.

17. Drop-In Customers

Transactions involving forgeries are often brought in by “drop-in customers.” These customers are difficult, if not impossible, to contact outside of the office. This type of forger will utilize a fictitious address or a letter drop service and/or a telephone number connected to an answering service. If you are having difficulties contacting the customer, before closing the transaction you should verify that the address and telephone number given connect to an actual place of business or residence and that they can be traced.

18. Unimproved Property

A forger usually wants to be able to enter upon the property and, if necessary, to show it to prospective victims without fear of discovery by the true owner. Consequently, if the property is unimproved land or the owner is not residing on the property, the owner’s identity must be verified.

19. Visibly Altered Documents

Erasures, white-outs, differences in type between different portions of the document, etc. may indicate the document is forged.

10. Buyer/Borrower walking away with money

Whenever a check for net loan proceeds is cut directly to the buyer or borrower, you should be alert to a possible fraudulent situation.