

ESCROW **RED** FLAGS

1 Tax Withholding and Deferred Exchange

Federal Tax Withholding

- If seller is not a US citizen they may be subject to withholding of 15% of the sales price.
- Need to have SSN or apply for an ITIN. Process can take 4-8 weeks.
- May be exempt if sales price is under \$300k and buyer will live in the residence.

State Withholding

- Withholding may be 3.33% of sales price if not primary residence for seller.
- Can claim a loss or no gain for exemption.
- LLC or Corporation may be exempt as well.
- Claim 1031 exchange for exemption.
- May select alternative withholding amount rather than full 3.33%.

Tax Deferred Exchange (1031 exchange)

- Need to contact exchange facilitator.
- Cannot take possession of proceeds from sale of house.
- Let your Escrow Officer know right away.

2 Judgments, Liens or Bankruptcy

Judgments/Liens

- Attach to real property anywhere in CA no matter where recorded in the state.
- May be wiped out by foreclosure if recorded after foreclosing Deed of Trust.

- IRS tax liens may survive foreclosure (120 day right of redemption)
- Must be cleared in a short sale.

Bankruptcy

- If seller or buyer is in bankruptcy let Escrow Officer know right away.
- Requires release of property from Bankruptcy court or approval of the sale by the Bankruptcy court.
- If spouse of seller or buyer is in bankruptcy and required to sign quitclaim deed the court would need to approve.

3 Trusts, Probate and Court Orders

Trusts

- Must have trustee or successor trustee sign; most do not allow for POA.
- If originals trustee(s) are deceased require an Affidavit of Change of Trustee; do not need original certified death certificate.
- Proceeds must be made payable to the trust; cannot be paid to trustees or beneficiaries individually.

Probate or Court Orders

- Required when seller is deceased and property was not titled in a trust or with right of survivorship.
- Must have original filed and stamped court order or letters to record with grant deed.
- If seller shown on title is deceased let Escrow Officer know ASAP so issues can be addressed.

4 Deposits

Initial Deposits

- Personal check needs to be drawn on a California Bank.
- ACH deposits - (Automated Clearing House) are **not accepted**.

Closing Funds

- Personal checks are **not** accepted to close escrow.
- ACH deposits - (Automated Clearing House) are **not accepted**.
- Closing Funds are deposited into Old Republic Bank account direct are subject to verification and may cause a delay in closing.
- Escrow Number needs to be referenced on all Incoming Wires.



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