
“RED FLAGS” FOR REAL ESTATE AGENTS

Agents need to be able to recognize and handle red flags in real estate transactions. A “red flag” is a fact or circumstance alerting the agent to a potential defect or discrepancy. Common examples of red flags in real estate transactions include: evidence of drainage problems, flooding or standing water, leakage or seepage, pest infestation or dry rot, mislocated boundaries, and discrepancies in lot size or living area.

Red flags can appear anywhere – the seller disclosure statement, the agent’s personal observation, a listing, flyer or advertisement, City or County records, an appraisal or inspection report, or a neighbor. Sometimes the red flag is merely a rumor or suspicion originated by an overzealous inspector, a disgruntled neighbor, or a disappointed buyer or another agent.

The relevant legal duties are found in the Law of Real Estate Agency. Licensees owe a duty to: exercise reasonable skill and care, disclose known existing material facts not apparent or readily ascertainable to the buyer, and take no action adverse or detrimental to the client. On the other hand, licensees owe *no* duty to: inspect the property or investigate information obtained from a reasonably reliable source, unless the licensee agrees otherwise, or disclose past defects the licensee reasonably believes have been corrected.

Regardless of its source, once a red flag is spotted, there are three simple steps in dealing with it:

- R**efute (or confirm),
- E**liminate (correct), or
- D**isclose the potential defect or discrepancy.

The specific steps necessary to refute or eliminate the potential defect or discrepancy depend on the nature of the red flag. Some red flags are simple to refute or eliminate (e.g., whether the house is served by cable TV) – others are difficult and/or expensive (e.g., boundary disputes, land use and environmental issues, or soil stability concerns). Some can be addressed with specific and timely disclosures and disclaimers (e.g., seller disclosure statement) – others can be addressed with contingencies in the purchase and sale agreement shifting the responsibility to the buyer (e.g., inspection and feasibility study contingencies). Sometimes such risks can be shifted to third parties (e.g., through home warranties, preventative maintenance contracts or extended coverage title insurance).

Whether the agent should assume the responsibility for taking these steps depends on the risk and cost involved. If the agent does agree to investigate an issue, common sources of information the agent could consult include: City or County records, a title company, the utility district (water, sewer, electricity, gas, cable TV), the seller personally, prior owners or occupants, neighbors, an inspector, a surveyor, an appraiser, a contractor or an architect.

Although real estate agents are not required to inspect the property or verify information obtained from reliable sources, agents must be alert for red flags.

This article contains general information only, and should not be used or relied upon as a substitute for competent legal advice in specific situations.