



## When faced with red flags, buyer's and seller's agents should

- Defer to experts
- Document all observations and findings in writing and copy all parties as appropriate
- Investigate or recommend that the buyer investigate
- Avoid theorizing about the cause of an observation or assessing whether it's been corrected
- Note the source of facts given to the buyer
- Keep a log of conversations in which red flags are discussed with other licensees, buyers, sellers, or experts
- Regard every buyer as a novice

## RED FLAGS: find and conquer

Speak up about potential problems to protect yourself and your client.

BY BARBARA NICHOLS

We refer to them all the time, but what are real estate red flags, and what should we do when we identify them?

A red flag can be anything that alerts you to a potential problem or just doesn't seem quite right. Calling attention to red flags may make waves in a transaction, but it's far better than overlooking them, which leaves your client or customer vulnerable and you open to liability.

Red flags can be broken down into three major categories: visual, written, and situational.



### **VISUAL red flags**

A visual red flag is one you see with your eyes, such as

- A stain on a ceiling
- A retaining wall that's leaning
- Floors that aren't level

- Strange musty odors
- A very low ceiling, exterior wall surfaces inside the house, or anything else that may indicate construction was done without a permit

As a real estate licensee, you're not expected to have the knowledge of a qualified home inspector. However, you have a fiduciary duty to your client—as well as a duty to the other party in the transaction of honest and fair dealing—to understand what you're selling within the scope of your real estate license.

Therefore, you should walk a property inside and out looking for flaws that may be material to the transaction. California, for example, requires all licensees to conduct a "reasonably competent and diligent visual inspection" and note their observations on the seller's disclosure form.

If this isn't mandated in your state, and you're the buyer's agent, note

your observations or knowledge in a memo to the buyer and copy the seller's agent.

If you're the seller's agent, discuss your observations with the seller, the importance of full disclosure, and your need to inform the buyer's agent. Ideally, the buyer should sign for the receipt of all disclosures. Alert the home inspector as well.

Just as flaws can raise red flags, so can recent repair work. For example, wide cracks in a patio deck that have been filled with cement, and tile in the adjoining interior that appears new may indicate a repair that's masking an underlying problem. Do the filled cracks outside also extend inside? Is the new tile covering interior cracks?

Keep in mind that homeowners are often encouraged to patch and paint to get their homes into top-notch condition for selling, but

patching isn't the same as concealing. If you, as a buyer's agent, see evidence of a recent repair, ask a lot of questions: When were the repairs made? How extensive was the problem? Are there permits or receipts? Then document the seller's answers for the buyer and recommend appropriate inspections.

If you represent the seller, discuss your observations with the seller and explain how full disclosure benefits all parties.



#### **WRITTEN red flags**

A red flag can also appear in writing in any transaction document. For example:

- The preliminary title report lists the owner as someone other than the seller or includes additional owners.
- The seller discloses a prior foundation problem and says it "is believed to be fixed," but doesn't have a permit, construction plans, or other significant documentation.
- The seller admits to constructing an addition without a permit but says it was built to code. That's unlikely; reputable builders don't build without permits.

To protect yourself and your clients, read every document related to property condition or disclosure and note any item of concern—preferably in writing. Buyer's agents should recommend appropriate investigations or inspections.



#### **SITUATIONAL red flags**

A situational red flag is indicated by the environment or circumstances. For example, for a probate or foreclosure property, the sellers, often banks, aren't required to complete property disclosure forms, even in states with seller disclosure laws.

In such a case, the limited or total

absence of property condition information can be a red flag. It should prompt you to encourage prospective buyers in writing to do even more thorough inspections and investigations.

An areawide problem can also be a situational red flag. For example, is the home in a subdivision known to often have faulty fireplaces, in an area known for foundation problems, or in an area built over a former waste dump or situated on an airport flight path? Those situations are material facts that should be disclosed in writing, with the buyer advised to investigate thoroughly.

Environmental issues such as the potential presence of lead paint, asbestos, or radon gas might also be red flags. You may know those prob-

lems can exist in your area but may not be able to actually observe them. Some states mandate that buyers be given a booklet on potential environmental hazards, and it's then left to the buyer to investigate further.

Federal law requires disclosing the potential presence of lead-based paint in homes built before 1978. For such houses, give the proper disclosures and suggest that an expert conduct a lead-paint inspection.

*Barbara Nichols, a licensed real estate broker and general contractor, owns Nichols Real Estate and General Contracting, Los Angeles, and often serves as an expert witness. She can be reached at 310/273-6369 or [www.homesavvy.com](http://www.homesavvy.com).*

