1. Knowledge, experience, and integrity of the MLB through whom the transaction may be made or arranged

Before placing your trust and money with an MLB, you would be wise to call: (1) the Department of Real Estate (DRE) to determine if the MLB and his or her loan representatives are properly licensed, how long each has been licensed, and whether any of the licenses have been disciplined; and (2) the local Better Business Bureau to ask if any complaints have been lodged.

Ask the MLB to provide a professional profile for your review and information as to the approximate number and percentage of loans, if any, negotiated by the MLB which resulted in foreclosure (commenced and/or concluded) during the past few years.

Ask the MLB if he or she is the borrower or if he or she has any relationship to the borrower (e.g., if the MLB is a relative, a shareholder, an officer, a director, or a partner of the borrower). When the MLB is the borrower or related to the borrower, we refer to the transaction as "self-dealing."

2. Market value and equity of the property and the security for your loan

The market value of the Property is critical to your decision to lend your funds or purchase a promissory note because there is a possibility that the only way to recover your investment is through the sale of the Property. Therefore, the market value of the Property should be correctly estimated and the total loan-to-value ratio properly analyzed as illustrated below. This information should be made available to you before you commit your money to the transaction.

A. Market Value — The sale price, the cost to build, or the value in use to a specific owner does not necessarily represent the market value of the Property. A market value opinion requires consideration of comparable sales and other market data by a competent professional.

The market value conclusion may be presented in the form of an appraisal report. While the borrower customarily pays for the cost of the appraisal report, either you or the MLB usually retain the appraiser's services to prepare the report, which should be reviewed by you in advance of funding the loan or purchasing the promissory note. You should make every effort to inspect the Property which will be the security for your investment.

B. Loan-to-Value Ratio — The total loans against the Property, including your loan, divided by the market value of the Property determines the loan-to-value ratio. For example, if a borrower has a first deed of trust in the amount of $25,000.00 and is requesting a second deed of trust in the amount of $40,000.00 and no other liens will be placed against the Property, which is valued at $100,000.00, the loan-to-value ratio is 65% ($25,000.00 + $40,000.00 divided by $100,000.00 = 65%).

The lower the loan-to-value ratio and the greater the borrower's equity, the more incentive for the borrower to protect the equity in the Property (i.e., sell or refinance the Property if unable to make payments under your promissory note) or for a third-party bidder to purchase the Property at a foreclosure sale. If the Property is overencumbered (the total loans or other liens exceed a reasonable loan-to-value ratio or exceed the market value), the Property will provide little or no security for your investment. A sufficient equity should be maintained in the Property to allow for the fees, costs, and expenses that you will incur in foreclosing if that becomes necessary.

Note: The borrower's equity is not the same as the protective equity. The borrower's equity is the difference between the market value of the Property and the total indebtedness secured by the Property. The protective equity is the difference between the market value of the Property and the total indebtedness of loans senior to your loan and your loan, but does not include loans junior to your loan.

The existence of a lien junior to your loan will diminish the borrower's equity, increase the borrower's payments or debt service, and reduce the borrower's ability to refinance. In the event of a default regarding senior loans (liens), beneficiaries who have a right of lien upon a property of another (lienors) and who are junior are entitled to protect their security interest in the Property by paying the borrower's delinquencies on senior liens and/or by commencing their own foreclosure action. Therefore, junior lienors should keep informed of defaults in connection with senior loans (liens).

C. Preliminary Report (PRELIM) — The MLB is required to provide you with the option to apply to purchase title insurance or an endorsement to an existing policy. The PRELIM, also known as the Preliminary Title Report, is prepared by a title company and is an offer to insure and does not provide conclusive information about the status of title.

Title insurance companies offer different types of coverage. You should ask your MLB or the title company from whom the report was obtained for an explanation of the different types of coverage available (e.g., CLTA and ALTA) and to what extent you are insured.

You should not consider a PRELIM as providing you with reasonably current information unless it is dated within 90 days of your examination of the report. Therefore, you should ask the MLB to provide an amended and current PRELIM dated as closely as possible to your commitment to fund a loan or purchase a promissory note.

The **current PRELIM** should provide the following information regarding the Property:

(1) The name(s) of the owner(s);

(2) Legal description, street address (if available), and the assessor's parcel number;

(3) Assessor's plat map, which illustrates the configuration, dimensions, and general location of the Property;

(4) Assessed valuation;

(5) Existence and priority of liens and encumbrances;

(6) The name of the owner(s) of existing lien(s); i.e., the owner of record of any deed of trust (lien) which you may be purchasing;

(7) Requests for notices concerning status of the liens, notices of default (**NOD**), and notices of trustee's sale (**NOS**);

(8) Notice of a lawsuit or bankruptcy affecting the Property; and

(9) Potential off-record interest of a spouse or other party.

In reviewing the current PRELIM for the above information, be alert to various problems which might affect **the market value and equity of the Property and the security for your loan**. If any of the following issues are encountered, ask the MLB or a title officer for a full explanation.

(1) The borrower is not the owner, or the borrower is only one of the owners of record, or a person other than the borrower has an **unrecorded interest** in (or claim against) the Property and does not execute the loan documents.

(2) The ownership (**estate**) is other than fee title (e.g., a leasehold estate), or there is an exception noted regarding the deed transferring title to the Property to the present purported owner of record.

(3) The Property does not have **direct access** to a public road, has only easement access, or is unusually configured.

(4) There is a substantial difference between **assessed and appraised value**, or the assessed valuation does not include improvements while the appraisal report includes both land and improvements.

(5) There are: (a) taxes, assessments, or association dues unpaid or delinquent; or (b) deeds of trust, judgment liens, claims, or bonds which may or may not be discharged from the proceeds of the loan.

(6) There is an NOD or NOS which will remain because the lien is not being removed by the proceeds of the loan.

Note: A default may indicate that the borrower's capacity and desire to repay the loan is in question and/or that the security for your loan may be impaired unless the notice of default or notice of sale of the senior lien which is to remain is rescinded. See Section 7: *Recovering Your Investment When the Borrower Fails to Pay*.