

- (4) Statements from existing lenders reporting amounts owed (**beneficiary or payoff demand statements**).

The **desire to repay** is based on the borrower's past performance in handling credit. To verify the borrower's representations about desire to pay, you may ask to review:

- (1) Credit report;
- (2) Reports providing payment history on existing loans, including the number of late payments (**loan status reports**); and
- (3) Credit references.

When considering the borrower's capacity and desire to repay, you should ask whether the borrower has, immediately preceding the request for the loan, borrowed a substantial amount of money. A significant amount of concurrent borrowing may indicate the borrower is experiencing difficulty meeting his or her financial commitments. Extensive borrowing may make it more difficult for the borrower to meet financial commitments.

4. Escrow process involving the funding of the loan or the purchase of the promissory note

Your funding of a loan or purchase of a promissory note should be transacted through an "escrow." An **escrow** is opened when money, documents, instruments, and written instructions regarding the transaction (**escrow instructions**) are conditionally delivered by the principals to a third party (**escrow agent**).

The escrow instructions set forth the conditions which must be satisfied or waived before the escrow agent may disburse your funds to either the borrower or the note holder. These conditions include, but are not limited to: (1) removal of certain liens; (2) payment of delinquent taxes;

(3) execution and delivery of the promissory note and deed of trust or execution and delivery of the assignment or endorsement of the promissory note and assignment of deed of trust (if you are purchasing an existing promissory note); (4) selection of title insurance coverage; and (5) recording of the deed of trust or assignment of deed of trust concurrently with the delivery of funds pursuant to the escrow instructions.

The information in the escrow instructions should be consistent with your understanding of the loan transaction. Compare the promissory note and deed of trust with what you were told at the time you agreed to make the **investment**. Before you approve of the escrow instructions and loan documents, make sure you have received an explanation and you have understood that which you have been told.

Both the promissory note and deed of trust should state the name of the borrower and you as the lender and note holder or the assignee or endorsee of the note holder. You should not deliver your funds to either the escrow agent or the MLB unless your instructions identify a specific promissory note and deed of trust (or interest therein).

The escrow instructions should require the promissory note and deed of trust be delivered to you or an independent custodian on your behalf at the close of escrow. A broker is required to deliver, or cause to be delivered, conformed copies of any deed of trust to both the investor and borrower within a reasonable amount of time after the recording date. If you are purchasing an existing promissory note, the following should be delivered to you or an independent custodian on your behalf at the close of escrow:

- Deed of trust
- Assignment of the deed of trust