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Warranties to Request When Purchasing Loan Documents

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This article is the fourth in a multi-part series based on the Lowndes white paper, "Selling & Acquiring Distressed Real Estate in Florida." Each installment will examine key legal and strategic considerations for acquiring distressed assets in the state. The next article will address what to watch for when buying a final judgment of foreclosure.

When purchasing loan documents, it is important to understand what representations and warranties you can reasonably request from the selling lender. These provisions help allocate risk and may provide recourse if the representations are later found false or warranties are breached.

While many lenders are reticent to provide representations or warranties in a contract, some may be willing to provide limited assurances based on their actual knowledge of the loan. As a buyer, you should consider asking the lender to confirm:

- Accurate payment history: A complete record of payments made by the borrower, which helps assess loan performance and potential risk, and will be needed to demonstrate the amount owed to the lender in connection with a foreclosure.
- Ownership and authority: That the lender is the current owner and holder of the loan documents and has the right to sell them.
- No other liens or interests: That the loan is not subject to any other liens and interests held by third parties that could affect its ownership or enforceability, such as collateral assignments and pledges.

Although lenders may be hesitant to provide extensive warranties, negotiating for these representations in the contract can provide important information about the loan documents and protection against potential false or misleading claims. Consult experienced legal counsel to

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help draft and review these provisions as part of your negotiations with the lender.

A more detailed discussion of the issues, presented by this article, and the nuances associated with this subject, are contained in a longer article on the Lowndes website here.

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