REAL ESTATE FINANCE (Law 5856)
Prof. Wilson Freyermuth
Spring Semester 2013
MW 3:15-4:05
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Course Information and Policies

This course focuses upon the law governing the creation, perfection, and enforcement of mortgage liens against real estate; priorities between competing liens (including the interests of mechanics’ lienors, judgment lien creditors, holders of lis pendens, and the bankruptcy trustee); transfers of mortgaged property; and transfers of mortgages (including securitization).

TEXT AND MATERIALS: The required casebook is Nelson, Whitman, Burkhart & Freyermuth, Real Estate Transfer, Finance and Development (8th ed. 2009). For certain assignments, I will distribute additional readings via the class webpage, which can be found at http://www.law.missouri.edu/freyermuth/ref/spring2013/index.html.

STUDY MATERIALS: The best resource for the study of the law of mortgages is Nelson & Whitman, Real Estate Finance Law (West, 5th ed.). This is a hornbook that is widely recognized as the most authoritative work on the subject of Real Estate Finance. Any good lawyer whose practice includes commercial or residential property transactions should have a copy of Nelson & Whitman on their bookshelf. **Don’t buy it for this course, though.** West actually publishes two versions of this hornbook—a one-volume “student” edition (green cover) and a two-volume “practitioner” edition (dark red cover). The practice edition is superior, because it is more detailed in its treatment of various subjects, and it also includes extensive forms. There are copies of both the practice edition and the student edition on reserve in the library, and these should be more than sufficient for your reference in this course. [Another reason not to spend the money to buy a copy of the hornbook now: a new edition of the hornbook, with comprehensive revisions, is in progress and will be published in 2014.]

On reserve, there are also four (4) copies of the ABA book, Anatomy of a Mortgage: Understanding and Negotiating Commercial Real Estate Loans (2001). This book...
provides a section-by-section explanation of the provisions of the Fannie Mae/Freddie Mac multi-family mortgage form (commonly used for mortgage loans on multi-family projects such as apartments where the lender expects to sell the loan to an issuer of commercial mortgage-backed securities).

**ATTENDANCE POLICY:** According to American Bar Association accreditation guidelines, class attendance is required and expected of all students. At the beginning of each class session, I will circulate a class roster on which students will note their attendance. Any student that misses more than six (6) regularly scheduled classes during the semester (regardless of the reasons for those absences) will be withdrawn from the course, or if allowed to remain in the class in my discretion, will be subject to a grade reduction. Please be present and ready to begin class promptly at 3:15 p.m.

From time to time, you may have to miss a class because of illness, family responsibilities, job interviews, or the like. I appreciate it when you can provide me with prior notice of your anticipated absence (an e-mail message is fine) or, in cases of emergency when notice prior to class is impossible, as promptly as possible afterwards. [In practice, clients and colleagues will expect such courtesy, so I encourage you to get in the habit of providing notice when you must miss class.]

Keep in mind (for this class and others) that many of you will need one or more of your professors to provide valuable references for you in the future — whether for the bar examiners or for future employers. If you are present and prepared for class discussion, and provide your professors with prior notice on the rare occasions when you must be absent, your professors will take note of your diligence and discipline, and will respond to inquiries by observing how diligently and seriously you pursued your studies. [Correspondingly, if you are often absent without explanation or excuse, your professors take note of that too.]

**COURSE GRADE:** Final grades in Real Estate Finance (Law 5856) will be based upon the following:

A. **Class Participation.** Participation in class discussion is encouraged and expected. I reserve the right to add up to two (2) points to a student's final course average for consistent and exceptional class participation. I also reserve the right to subtract up to two (2) points from a student's final course average for repeated unpreparedness, and one (1) point per absence for absences beyond the limit set forth above.

B. **Final Exam.** The final exam will be an in-class final exam consisting primarily of both multiple choice, short answer, and essay questions. It is scheduled for Tuesday, May 14, 2013, at 1:30 p.m.

**COURSE WEB PAGE:** I have established a webpage for this course. You can use the URL http://www.law.missouri.edu/freyermuth/ref/spring2013/index.html to reach the course Web page. A copy of this syllabus is posted on the Web page, should you misplace this copy.

The webpage contains all relevant information about the course, and you should therefore check the webpage prior to each class for the following: (a) The Assignment for each scheduled class period
will be posted on the webpage at least one week prior to that scheduled class, and past Assignments are archived on the webpage. (b) During some classes, I will have slides that accompany class discussion for a particular Assignment. As each Assignment is completed, I will post any slides related to that Assignment on the webpage. You may find that this reduces your need to take notes and helps you to pay closer attention to class discussion. (c) From time to time I will post memos on the webpage; often, these memos clarify a point raised in a previous class or respond to a question raised after class or in my office. (d) On some occasions, there may be specific issues or topics on which I choose not to spend class discussion time; in those cases, I will post a memo with any additional explanation that is necessary for your understanding of those issues. (e) Finally, announcements about class cancellations and reschedulings will also be posted on the webpage.

ACADEMIC INTEGRITY: Academic integrity is fundamental to the activities and principles of the School of Law. All members of the law school community must be confident that each person’s work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The law school community regards breaches of the School of Law’s Honor Code as extremely serious matters. Sanctions for such a breach may include academic sanctions from me, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. If you have any doubt about whether your work is or would be consistent with the Honor Code, consult me.

COURSE COVERAGE: On the following page is an outline listing the topics we will cover and the anticipated order in which we will cover them. The assignment for Week #1 is included following the syllabus. For subsequent weeks, assignments will be posted at least one week in advance on the course webpage.
Course Coverage

I. Introduction to Land Financing and the Law of Mortgages

II. The Mortgagor/Mortgagee Relationship Prior to Foreclosure

1. Collection of Rents and Profits
2. Waste/Environmental Contamination
3. Insurance and Taxes
4. Transfer by the Mortgagor and “Due-on-Sale” Clauses
5. Payment and Prepayment

III. The Foreclosure Process

1. Acceleration and Marshalling
2. Judicial Foreclosure
3. Power of Sale Foreclosure
4. Disbursement of Proceeds
5. Statutory Redemption
6. Deficiency Judgments
7. Deed in Lieu of Foreclosure

IV. Priority Issues

1. Purchase Money Financing
2. After-Acquired Property and Future Advances
3. Replacement/Modification of Senior Mortgages and Subrogation
4. Fixtures and Manufactured Homes
5. Mechanics’ Liens
6. Rights of the Bankruptcy Trustee

V. Mortgage Substitutes (Absolute Deeds, Conditional Sales, Installment Contracts)

VI. Transfers of Mortgages and Securitization of Mortgage Loans
Assignment for Real Estate Finance  
Class #1  
Wednesday, January 23, 2013

Read the following:

• In the Casebook:  Pages 99-106, 110-116, 962-976
• “It Took 90 Minutes for the Daily News to ‘Steal’ The Empire State Building” (news story from the New York Daily News, which appears below)
• The Freddie Mac Missouri Single-Family Deed of Trust (a copy of the Freddie Mac form appears on the course webpage and can be found at the following URL:
   http://law.missouri.edu/freyermuth/ref/spring2013/freddiemacmissourideedoftrust.pdf

In addition, using internet sources, find definitions for the following terms: “interest-only mortgage,” “line of credit,” “home equity line of credit,” “balloon payment mortgage,” “adjustable rate mortgage,” “points,” and “construction loan.”

“It Took 90 Minutes for the Daily News to “Steal” the Empire State Building”

In one of the biggest heists in American history, the Daily News “stole” the $2 billion Empire State Building. And it wasn’t that hard.

The News swiped the 102-story Art Deco skyscraper by drawing up a batch of bogus documents, making a fake notary stamp and filing paperwork with the city to transfer the deed to the property.

Some of the information was laughable: Original “King Kong” star Fay Wray is listed as a witness and the notary shared a name with bank robber Willie Sutton.

The massive ripoff illustrates a gaping loophole in the city’s system for recording deeds, mortgages and other transactions. The loophole: The system—run by the office of the city register—doesn’t require clerks to verify the information.

Less than 90 minutes after the bogus documents were submitted on Monday, the agency rubber-stamped the transfer from Empire State Land Associates to Nelots Properties LLC. Nelots is “stolen” spelled backward. (The News returned the property Tuesday.)

“Crooks go where the money is. That’s why Willie Sutton robbed banks, and this is the new bank robbery,” said Brooklyn Assistant District Attorney Richard Farrell, who is prosecuting several deed fraud cases.

Of course, stealing the Empire State Building wouldn’t go unnoticed for long, but it shows how easy it is for con artists to swipe more modest buildings right out from under their
owners. Armed with a fraudulent deed, they can take out big mortgages and disappear, leaving a mess for property owners, banks and bureaucrats.

“Once you have the deed, it’s easy to obtain a mortgage,” Farrell said. Many crooks have done just that:

- Asia Smith stole her 88-year-old grandmother’s house in Springfield Gardens, Queens, pocketing $445,000 in mortgages she took out. “Her grandmother raised her,” said Queens Assistant District Attorney Kristen Kane. Smith, 22, was arrested last December and is serving a one-year jail term for fraud.

- A man posing as someone who had been dead for 19 years deeded the dead man’s property to himself. He then sold it to the scheme’s mastermind, who took out a $533,000 mortgage and vanished with the cash.

- Toma Dushevic managed to steal seven dilapidated city-owned buildings in Brooklyn 10 years ago. He got renovation permits, fixed up one of the buildings, and rented out apartments. He sold another building for $250,000 and ran his scam for nearly two years until he was caught. Dushevic returned the buildings and did 18 months behind bars.

The FBI says financial institutions filed 31% more Suspicious Activity Reports involving mortgage fraud last year than in 2006. Nationwide, lenders’ losses totaled $813 million, and New York was one of the top 10 mortgage fraud states.

In the city, deeds accepted by the register’s office are recorded on that agency’s Web site, where they are easily viewed and are the basis for mortgage transactions.

The News investigation disclosed that mortgage brokers, representatives of title companies, lending banks, lawyers and others in the mortgage process often failed to verify identification and other information provided by the thieves.

Unlike the city employees, the brokers and others should check mortgagors’ information, their professional trade associations say.

In one Queens deed fraud case, a mortgage broker and title company representative are accused of taking part in the scam. They are charged with helping obtain $1.4 million in mortgages from two of the biggest banks in the city on behalf of the scammer, who has vanished.

In all cases The News reviewed, the city register’s office accepted and recorded the fraudulent mortgages.

Unlike the thieves, The News did not obtain a mortgage on the Empire State Building. Instead, The News returned the property to its rightful owners Tuesday—less than 24 hours
after the fake deed was filed. The News also is withholding key details of how the scam works.

Real thieves get the mortgage cash, ripping off banks and leaving the properties’ owners with mortgage debt and ruined credit. “Mortgages stay with properties,” Farrell explained. When the victims don’t pay the mortgages they didn’t take out, lending banks foreclose on the properties.

A major tool thieves use is the notary stamp on documents, one item city employees check. “They don’t check to see if it’s real, but they do check to see if it’s there,” said a lawyer familiar with the system. The stamps are easy to get and cost about $30.

National mortgage broker and title company trade associations said their members try to verify identification but can be fooled by clever hustlers. “We know you can forge driver’s licenses,” said Marc Savitt, president of the National Association of Mortgage Brokers. “Every time the industry finds out measures to stop fraud, the thieves always get one up on us.”

Anne Anastasi, a member of the board of governors of the American Land Title Association, said, “There are people who are very good at this and it’s hard to stop.”

**Discussion Questions for Class #1**

1. Did the *Daily News* really steal the Empire State Building? Why or why not? What happens to Asia Smith’s grandmother’s house when the mortgages are not paid off? Who are the ultimate victims in these mortgage fraud cases?

2. What’s the relationship between interest rates and types of loans (and types of mortgages)? Suppose that I am buying a home and shopping for a mortgage. In what circumstances would it make sense for me to get a “balloon-payment” loan that would require me to pay the balance in full in 5 years? In what circumstances would it make sense for me to get an ARM loan? A 15-year fixed rate mortgage? A 30-year fixed rate mortgage?

3. Read the Freddie Mac Missouri single-family mortgage form. [This is the standard form used in Missouri for conventional residential mortgage loans to be secured by someone’s primary home.] Before we begin our study of mortgage law, we’ll start by looking at this standard form as an “overview” for many of the issues we’ll address during the course. From your reading of the form, send me by e-mail (freyermuthr@missouri.edu) at least two (2) questions that you have about any of the provision(s) of the form. I will address some of these questions during class discussion on January 23, and the rest in a question/answer memo that I will post on the class website. [Please send your questions by no later than 5:00 p.m. on Tuesday, January 22.]