

NOTICE TO STUDENTS WITH DISABILITIES: The information contained in this syllabus is available in alternative formats upon request. If you have a disability and need accommodation, please notify Associate Dean David Mitchell as soon as possible.

To request academic accommodations (for example, a notetaker), students must also register with The Disability Center, S5 Memorial Union, 882-4696, disabilitycenter@missouri.edu. It is the campus office responsible for reviewing documentation provided by students requesting academic accommodations, and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements.

For other MU resources for students with disabilities, see <http://disabilitycenter.missouri.edu>.

REAL ESTATE FINANCE (Law 5856)

Prof. Wilson Freyermuth

Fall Semester 2019

MWR 8:00-8:50, Room 332A

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Course Information and Policies

This course focuses on credit transactions (loans) where repayment of the loan is secured by real estate. The course covers the law of mortgages/deeds of trust, including the mortgagor-mortgagee relationship (both before and during foreclosure), priority between competing mortgages and other liens, the modern secondary mortgage market (securitization of mortgage loans), and the impact of bankruptcy upon the rights of the mortgage lender.

TEXT: The required casebook is GRANT S. NELSON, DALE A. WHITMAN, ANN M. BURKHART, AND R. WILSON FREYERMUTH, REAL ESTATE TRANSFER, FINANCE AND DEVELOPMENT (9th ed. 2015). From time to time, I may distribute materials that may be included in a future edition of the book, or portions of certain state and/or federal statutes; I will provide these materials by handout and they will be posted on the course website. [Note that the casebook for this class will also be the casebook for the Real Estate Transactions class being taught in Winter/Spring Semester 2020.]

STUDY MATERIALS: The best and most detailed resource is the hornbook GRANT S. NELSON, DALE A. WHITMAN, ANN M. BURKHART & R. WILSON FREYERMUTH, REAL ESTATE FINANCE LAW (6th ed. 2015). There are several copies on reserve in the library.

There is also a study guide that is part of West Academic's "Black Letter" series, GRANT S. NELSON, DALE A. WHITMAN, ANN M. BURKHART & R. WILSON FREYERMUTH, LAND TRANSACTIONS AND FINANCE (5th ed. 2016).

NOTE: There is no need for you to buy a copy of either of these study aids. The full text of the hornbook and the Black Letter is available to you *for free* as part of the West "Study Aids Subscription" that is available to you through the law library. You can access it through the "Study Aids Subscription" link on the library's Westlaw log-in screen. If you prefer paper, there are also copies of the hornbook and the Black Letter on library reserve.

LEARNING OUTCOMES: In compliance with Standard 301(b) of the American Bar Association's Standards and Rules of Procedure for Approval of Law Schools, the following statement reflects the learning outcomes for this course.

In the Real Estate Finance course, students will:

- Learn the basic structures of the various types of lending transactions in which the borrower secures repayment by granting a voluntary lien (security interest) in real property, and the basic legal documentation (e.g., promissory notes and mortgages or deeds of trust) used in these transactions.
- Learn the relevant provisions of state and federal law governing the creation, transfer, and enforcement of mortgage liens.
- Learn the relevant provisions of state and federal law governing priority between conflicting mortgage liens and between mortgage liens and other types liens on real estate.
- Learn the basic structure of the secondary market for residential and commercial mortgage loans (securitization) and the role of the government and government-sponsored enterprises (such as Fannie Mae and Freddie Mac) in this market.
- Learn the relevant policy concerns underlying mortgage law.
- Gain knowledge useful for passing the Real Property portion of the bar examination, which includes coverage of liens and mortgage law.

Evaluation in this course will be on a both a FORMATIVE and a SUMMATIVE basis, as discussed later in the Syllabus.

INTERACTION WITH STUDENTS: I maintain an open-door policy as far as student questions and concerns. I do not maintain regular "office hours," as I am in my office much of the time during most weekdays (when not in class). If you have a question or concern about the course or law school, and I am in my office, you are welcome to come in and chat about your question or concern. You are also welcome to schedule a specific appointment if you prefer. Many students find it easy to communicate with me by e-mail

(freymuthr@missouri.edu); you are welcome to raise questions or concerns by e-mail if it is convenient for you.

ATTENDANCE POLICY: According to American Bar Association accreditation guidelines, class attendance is required and expected of all students. At each class, I will circulate a sign-in sheet for you to record your attendance. You are responsible to make sure that your name is on the attendance sheet. Any student that is not signed in as present will be considered absent for that day. I also expect students to be present and ready to begin class *promptly* at 8:00 a.m. Any student that misses more than **ten (10)** regularly scheduled classes during the semester (whether excused or not) ***will be withdrawn from the course*** or, ***in my discretion, allowed to remain in the course with a grade reduction for each absence in excess of ten (10) absences.***

If you have to miss a class because of illness, family responsibilities, a job interview, or the like, I would appreciate it if 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.]

COMMUNICATION USING THE WEBPAGE: I will maintain a webpage for this course. You can reach this page via the following URL:

<https://mulaw.missouri.edu/freymuthr/ref/fall2019/index.html>

Each week, I will post reading assignments for the following week's classes on the Web page. [All prior assignments are archived on the webpage as well.] In addition, I will often post a new hypothetical and/or discussion questions (*i.e.*, ones not included in the casebook) for the next class period's discussion. Further, I will sometimes use the Web page to post a memorandum to the class that clarifies a point of confusion that arose in class, or to pass along to the entire class a question (and answer) that a student posed after class or in my office. Finally, any messages regarding the postponing or rescheduling of classes will be posted to the course Web page. **You should visit the webpage each day to check for new information about the assignments for the following day's class meeting and/or future class meetings.**

COURSE REQUIREMENTS: As noted earlier in this Syllabus, evaluation in this course will be on both a formative and a summative basis.

Formative assessment will take the form of a weekly diagnostic exercise that will take different forms from week to week. These exercises are designed to help me evaluate (and provide feedback on) your comprehension of the course material as the semester proceeds. These diagnostic exercises will include:

- **In-class mini-quizzes.** On some Thursdays, I will distribute one or more multiple choice or short answer questions to be completed and collected during class. These mini-quizzes would be reflective of the kinds of multiple choice and/or short answer questions you would encounter on the final exam (or on the bar examination), and would focus on material covered during the previous week.
- **Practice exams.** On some Thursdays, I will distribute an essay question to be completed outside of class. These questions would focus on material covered previously in the course.
- **Multiple-choice question drafting.** On some Thursdays, students will prepare and submit an **original** multiple choice question (along with an explanation and analysis of the correct and incorrect responses). These questions will be posted on the class webpage, to provide members of the class with questions to assist in their review prior to the exam. At the end of this Syllabus, I have included a memo that explains how you should prepare and send your questions/explanations to me, and that provides a sample question/explanation to give you an idea what is expected.

If you submit a question that is factually ambiguous or for which your explanations are incorrect or insufficient, I will send you an e-mail reply pointing out the error and asking you to correct and resubmit the question and your explanations. This gives me a sense of how well students are understanding the material, and it allows me to correct misunderstandings about the material earlier rather than later.

There will be three of these student multiple-choice questions during the semester. **Note: At least two (2) of the multiple choice questions on the final exam will be questions drafted by members of this class** (although I reserve the right to change the names of the parties and/or make grammatical/spelling corrections as necessary).

Official grades will not be assigned for the weekly diagnostic exercises, **but timely completion of each diagnostic exercise is a course requirement**, and failure to timely complete an exercise will be taken into account as part of class participation, as explained below under the “Course Grade” heading.

Summative assessment will be in the form of a final examination, to be administered on the date indicated on the MU Law Final Exam Schedule. The final examination will consist of multiple choice, short answer, and essay questions.

COURSE GRADE: Final grades in this course 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. For each class or topic, I will post a series of discussion questions relating to the assigned material. I will use some or all of these questions as the basis for in-class discussion. To best facilitate good class discussion and the best use of limited class time, **I strongly encourage you to work through the discussion questions before class, either individually or in a study group.**

If you fail to submit any diagnostic question in a timely fashion (or fail to correct and resubmit any multiple choice question until it is suitable for posting on the class website), your grade will be reduced by 1 point for each such occasion.

- B. **Final Exam.** There will be an in-class final exam consisting of multiple choice, short answer, and essay questions. On the exam, you may use an outline that you prepared (either yourself or in conjunction with a study group), but no other materials.

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 possible failure of the course for a violation) as well as disciplinary sanctions from the School (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: Following are the topics we will cover and the anticipated order in which we will cover them. The page numbers are tentative; as the semester proceeds, I may choose to delete coverage of some of the listed pages and/or provide supplementary materials. As a result, you should always check the webpage for the official assignments as they are posted each week.

The assignment for the first week is posted on the course website. For subsequent classes, I will post on the course website a memo containing the assignments for the following week's classes.

Course Coverage

I.	Introduction to Mortgage Loans, Servicing, Foreclosure and the Mortgage Market	117-123 124-129 1061-1078 Handout #1
II.	Rights and Duties Prior to Foreclosure	
A.	Lien Theory vs. Title Theory and “Mortgagee in Possession”	373-380
B.	Leases, Rents, and Receivership	380-428
C.	Waste	429-438
D.	Right to Insurance Proceeds Escrows for Insurance/Real Estate Taxes	451-475
E.	Payment, Prepayment, Default Interest, Late Fees	592-623
III.	Transfer of the Mortgaged Land (Without Release of Mortgage)	477-516
IV.	Foreclosure	
A.	Acceleration and Marshalling	669-694
B.	Strict Foreclosure and Judicial Foreclosure	694-714
C.	Nonjudicial (Power of Sale) Foreclosure	724-759
D.	Application of Sale Proceeds	788-796
E.	Statutory Redemption and Reacquisition of Title	796-821
F.	Deficiency Judgments and Antideficiency Legislation	821-826 TBA
G.	Deeds in Lieu of Foreclosure, “Short Sales,” and Loss Mitigation	630-668
V.	Mortgage Substitutes	285-355
VI.	Priority Issues	969-1041 1180-1200

VII. Transfer of Mortgage Loans (Securitization)	516-592
VIII. Bankruptcy and Its Impact on the Mortgagee	871-961

DRAFTING MULTIPLE CHOICE QUESTIONS

As the Syllabus suggests, as part of the formative assessment in this course, students will from time to time prepare and submit an original multiple choice question to be posted to the course webpage during the semester. I have three reasons for this requirement:

- First, having a significant number of sample questions will help class members with exam preparation and review.
- Second, preparing a good question will require you to develop a more complete understanding of the particular rules of law on which your question focuses.
- Third, to the extent that you post a question and/or explanation that is ambiguous or inaccurate, I can learn about your confusion or error more quickly — and can help you correct it earlier in the semester (so that at the end of the semester, you're reinforcing what you've already learned, rather than trying to figure things out for the first time).

This memo explains in more detail how you should prepare and send your questions.

Preparing a Question. Questions should take the form of relatively simple hypotheticals designed to test understanding and application of one or more legal principles covered in the course. Each question should contain four responses: one correct and three incorrect. A good question should include at least one or two “incorrect” answers that appear plausible.

For example, the following question tests understanding of the rights of a mortgagee to file a claim against the mortgagor's insurance policy as a result of a fire that occurred prior to a foreclosure sale at which the mortgagee purchased the property:

Bank holds a mortgage on Strong's home. The debt is in default and Strong owes Bank \$200,000 (including interest costs). Bank forecloses, buying the home at the foreclosure sale with a bid of \$200,000. At the time of the sale, Strong's home had burned down three days earlier due to a fire intentionally set by Strong herself, although Bank was unaware of this. Strong's fire insurance policy (which contained a “standard mortgage clause”) named Bank as an additional insured party. After the fire, Strong's home was worth only \$40,000. By the majority view, can Bank make a successful claim on Strong's fire insurance policy?

- A. Yes, because Bank's security was impaired by the fire to the extent of \$160,000.

B. Yes, because the “standard mortgage clause” gives Bank a claim irrespective of the cause of the fire.

C. No, because the insurer has a defense to payment under the policy because Strong set the fire intentionally.

D. No, because Bank’s bid at the foreclosure sale satisfied the debt and thus Bank suffered no loss on account of its insured interest.

Preparing Your Explanations. After preparing your question, you should also prepare a message explaining (a) which answer is correct and why, and (b) why the other answers are incorrect. For example, the explanation for the above question might read as follows:

Answer (A) is INCORRECT. While it is true that Bank will only be able to sell the home for \$40,000 at this point because of the fire damage, and that Bank may have expected to be able to sell the home for \$200,000, this does not mean that Bank suffered an insured loss. Strong’s insurance policy insured Bank against the risk of Bank suffering a loss in its capacity as mortgagee, but Bank’s \$200,000 full credit bid extinguished the debt and thus Bank was repaid in full on the debt; Bank thus suffered any insurable loss.

Answer (B) is INCORRECT. It is true that the “standard mortgage clause” would prevent the insurer from denying coverage against the Bank on account of Strong’s arson, the insurer has a completely different basis here for denying coverage. As noted above, the Bank’s full credit bid of \$200,000 means that Strong’s debt was satisfied in full, and thus the Bank did not suffer any insurable loss in its capacity as mortgagee.

Answer (C) is INCORRECT. It is true that the insurer has a valid defense to payment, but the fact that Strong committed arson is not a valid defense. Because the policy contained a standard mortgage clause, the insurer was obliged to indemnify Bank for an insurable loss on account of damage to the property even if the insurer could have asserted a defense as against Strong (which it could have given that she set the fire intentionally). As discussed below, the insurer has a different basis on which to deny coverage.

Answer (D) is CORRECT. The insurance policy insured Strong’s interest as owner of the home and Bank’s interest as a mortgagee. Bank’s interest as a mortgagee was extinguished when the Bank made its \$200,000 full credit bid at the foreclosure sale. Because this full credit bid extinguished the debt, technically Bank suffered no loss as a mortgagee, and thus has no basis for a claim against the insurer under the policy. If Bank had bid only \$40,000 (the value of the home after the fire), then Bank would have suffered a \$160,000 loss as mortgagee and could have recovered this amount

under the policy. Bank's lack of knowledge is irrelevant because Bank could have inspected the home and seen that it had burned down; Bank's full credit bid is thus a product of its own lack of due diligence.

Sending Your Question and Explanations. For any week in which the diagnostic exercise is a student-drafted multiple choice question, you should send me the question and your explanation, in the format suggested above, by e-mail at freymuthr@missouri.edu. After I receive your question and explanation, I will review it. If there is a problem with your question — i.e., if it is factually ambiguous, or if there is a problem with your analysis — I will send you a reply message pointing out the problem and asking you to revise the question and resubmit it. Likewise, if your explanation is not sufficiently detailed, I will ask you to provide an appropriate explanation.

Once the question and the explanation are sufficient for posting, I will post the question and the explanation to the course webpage for the benefit of all students in the class. [Note: It is rare that someone's question is "ready to post" when it is first submitted. Most students will have to "revise and resubmit" at least once.]