

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 Ben Trachtenberg 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
Winter/Spring Semester 2021
MWF 9:00-9:50, Room 6
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Course Information and Policies

This course focuses on applicable state and federal laws governing the creation and enforcement of 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), issues of priority between competing mortgages and other liens, the legal rules underpinning the structure and operation of 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 Canvas site.

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: Please do not buy a copy of either of these study aids, at least not for use in this class. The full text of the BOTH 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.¹

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 documents (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 the transfer of 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.
- Become familiar with the relevant policy concerns underlying mortgage law.
- Gain knowledge useful for passing the Real Property portion of the bar examination, which includes significant coverage of liens and mortgage law.

¹ Sometimes, students will say "I plan to practice in this area and want to get a copy of the hornbook so I'll have it when I'm in practice." My advice: (1) wait until you are in practice to buy it; by then, the cost of buying it will be a deductible business expense; (2) a new edition of the hornbook is likely in another two years, so wait for that one. In the meantime, use the "free" one that your tuition and fees are already paying for!

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

DECREASING THE RISK OF COVID-19: If you are experiencing any COVID-related symptoms, or are otherwise feeling unwell, do not attend class and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea. If you are unable to attend a scheduled class due to illness or medical reasons, course sessions will be recorded for your review. See the “Communication, Accommodation, and Pivot Plan” below for more information.

You must wear a face covering while in the classroom, unless you have a documented exemption due to a disability or medical condition. You are responsible for bringing your own mask; I will have an extra mask available for your use if you do not have one. You must maintain a 6-foot distance from each other at all times.

COMMUNICATION, ACCOMMODATION, AND PIVOT PLAN: While this class is scheduled to meet on a face-to-face basis, note that (1) any class periods are subject to being moved into a synchronous remote format as warranted by data about COVID rates within the University and Columbia communities; and (2) students who cannot attend a face-to-face class due to illness or medical reasons will be accommodated to facilitate their participation in the course. Thus, please note the following:

- **Communication.** This Syllabus addresses how you may communicate with me during the course, both at the beginning and if it becomes necessary to transition the course to fully remote. See “Communication with Students” below for further details.
- **Accommodation.** If you are unable to attend a scheduled class in person due to illness or medical reasons, here is an explanation of how you should plan to participate:
 - If the scheduled class is already scheduled as a synchronous Zoom class (whether because of a guest speaker or because of COVID-related reasons), you should plan to participate live in synchronous fashion via Zoom.
 - If the scheduled class is a face-to-face class session, I will conduct the class in-person as scheduled, but with Zoom operating and recording the class session. You should plan to participate live in that class in synchronous fashion via Zoom. If you cannot attend the synchronous session, you may subsequently access the recording of the class, which will be posted after

class (typically, by no later than Noon on the day of class) on the Canvas site for your review there. [Recordings will appear under the “Panopto Videos” link on the Canvas site.] I will treat you as “present” for the class once you have certified to me that you have reviewed the recorded class and have participated in the Canvas discussion board as explained later in this Syllabus. [See Attendance Policy]

- **Pivot.** If pandemic-related circumstances require class sessions to be moved fully online, class sessions will simply shift to synchronous Zoom sessions. An announcement that any particular class or set of classes will be conducted in a synchronous Zoom session will be posted via announcement on the course Canvas site. Any such sessions will be recorded and posted on the class Canvas site.

COMMUNICATION WITH STUDENTS: I have traditionally maintained an “open-door” policy, which is something of a challenge during a pandemic. You are welcome to connect with me in any of the following ways:

- If the class is face-to-face, I will remain in Room 6 after each class session for follow-up questions. During any synchronous class, I will remain on Zoom after each class session for follow-up questions.
- I will have virtual Office Hours on Zoom from 8:00 to 10:00 a.m. on Tuesdays. By e-mail, you will receive a recurring Zoom invitation that will include a link for these office hour sessions.
- If you need to set up a specific appointment time for a virtual office visit, send me an e-mail to schedule a time.
- You are welcome to communicate with me by e-mail to raise questions or concerns at any time, if that is convenient for you. My address is freymuthr@missouri.edu.

If I am in the building and in my office, you are welcome to stop by my office with a question, subject to your compliance with the University’s social distancing and masking protocols.

ATTENDANCE POLICY: According to American Bar Association accreditation guidelines, class attendance is required and expected of all students. At each class, I will place a sign-in sheet for you to record your attendance at the end of the row nearest the entrance door to Room 6. 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 9:00 a.m.

Any student that misses more than **ten (10)** regularly scheduled classes during the semester *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.]

If you cannot attend a particular class session for any reason (e.g. you are sick or are taking care of someone who is sick, you have a doctor's appointment, you have a job interview), I will count you as "present" for that class session if: (1) you advise me of your absence by e-mail, either before or immediately after the class in question; (2) you review the recording of the class you missed; and (3) you post a timely question to the Canvas discussion board concerning the material covered in that class and you contribute to discussion on the Canvas discussion board regarding the material covered in that class. It is your responsibility to demonstrate that you have complied with the attendance policy.

COMMUNICATION USING THE COURSE CANVAS SITE: I will maintain a Canvas site for this course, which is available using your MU pawprint and password at canvas.missouri.edu or courses.missouri.edu.

At the end of this Syllabus, you will find a Course Schedule that reflects each Module to be covered in the Real Estate Finance course. The assigned readings (from the casebook or any handouts) and discussion prompts for each module are posted on the Canvas site. These announcements will be archived on the site all semester.

I will sometimes post an announcement on the Canvas site to clarify 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. I will also sometimes use the Canvas discussion board to post a question to prompt interchange in that setting about issues or questions for which class time was not sufficient. Finally, any messages regarding the postponing or rescheduling of classes (or the pivoting of classes to or from "face to face" vs. synchronous mode) will be posted by announcement to the Canvas site, and all class recordings will be archived as Panopto videos on the Canvas site. **You should visit the Canvas page regularly to check for new information about the assignments for upcoming and 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 following forms. These exercises are designed to help me evaluate (and provide feedback on) your comprehension of the course material as the semester proceeds. These will not be officially graded, but they are completion requirements for the course. [Thus, your failure to turn them in could affect your course grade negatively for incomplete participation.]

- **Practice quizzes.** Each Friday, I will distribute (via Canvas) a practice quiz comprised of multiple choice and/or short answer/short essay questions. These will be very brief (no more than 2-3 questions) and thus would be something you can complete in no more than 15 minutes.
- **Multiple-choice question drafting.** On some Fridays, a designated group of students will prepare and submit one **original** multiple choice question (along with an explanation and analysis of the correct and incorrect responses). These questions will be compiled and ultimately posted on the class Canvas page, as part of a practice quiz, to provide members of the class with questions to assist in their review prior to the exam. Over the course of the semester, each student will prepare and submit two (2) such questions, in accordance with a schedule that I will distribute during the second week of the class.

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 associated with the question, and it allows me to correct misunderstandings about the material earlier rather than later.]

Summative assessment will be in the form of a final examination, to be administered on the date indicated on the MU Law School Final Exam Schedule. The final examination (3 hours in length) will consist of multiple choice, short answer, and essay questions.

COURSE GRADE: Final grades in this course will be based upon the following:

- A. **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. Except as noted in Paragraph B (Class Participation), the final exam score will constitute 100% of your course grade.

B. **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 complete more than one (1) diagnostic practice quiz, or you fail to timely submit and/or correct either of the required student-drafted multiple choice questions, your grade can be reduced by up to three (3) points.

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. If you become aware that you or another student have violated the Honor Code, you **MUST** report the violation promptly to me or to Dean Trachtenberg.

RECORDINGS: UM System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations of the University of Missouri. In this class, students may make audio recordings of course activity. However, any distribution or redistribution of such recordings of statements or comments from the course to individuals who are not students in the course (including, but not limited to, any posting of a recording to social media) is prohibited without my express permission and the permission of any other student in the class whose voice and/or image was recorded. Students who violate this policy are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. **Note: Because this class is being recorded already for posting to the Canvas site pursuant to the Communication, Accommodation, and Pivot Plan discussed above, you may not find it necessary to record the class yourself.**

INTELLECTUAL PLURALISM: The University community welcomes intellectual diversity and respects student rights. Students who have questions or concerns regarding the atmosphere in this class (including respect for diverse opinions) may contact Dean Lidsky or Dean Trachtenberg, the director of the Office of Students Rights and

Responsibilities, the MU Equity Office, or equity@missouri.edu. All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of the course.

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 Module A is posted on the course Canvas site. Assignments for subsequent Modules will be posted on the Canvas site as the semester proceeds.

Course Coverage

| Module | Topic | Pages |
|--------|---|--|
| A | Introduction to Mortgage Loans, Servicing, Foreclosure and the Mortgage Market | 117-123 124-129 1061-1078 Freddie Uniform Instruments |
| B | Rights and Duties Prior to Foreclosure: Lien Theory vs. Title Theory “Mortgagee in Possession” Leases, Rents, and Receivership | 373-380 380-428 |
| C | Rights and Duties Prior to Foreclosure: Waste | 429-438 |
| D | Rights and Duties Prior to Foreclosure: Insurance Proceeds Escrows for Insurance/Real Estate Taxes | 451-475 |
| E | Payment, Prepayment, Default Interest, Late Fees | 592-623 |
| F | Transfer of the Mortgaged Land (Without Release of Mortgage) | 477-516 |
| G | Default: Acceleration | 669-688 |
| H | Default: Judicial Foreclosure | 694-714 |

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| I | Default: Nonjudicial Foreclosure | 724-759 |
| J | Default: Post-Foreclosure Sale Issues | |
| | Application of Proceeds | 788-796 |
| | Statutory Redemption and Reacquisition of Title | 796-821 |
| | Deficiency Judgments and Antideficiency Rules | 821-826 |
| | | TBA |
| K | Deeds in Lieu of Foreclosure and Loss Mitigation | 630-668 |
| L | Mortgage Substitutes | Canvas Handout |
| M | Priority Issues | Canvas Handout |
| N | Transfer of Mortgage Loans (Securitization) | 516-592 |
| O | 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 Canvas site 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 draft and submit 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 would test 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 in a legal sense, Bank was repaid in full on the debt; Bank thus suffered no 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. But the insurer has a completely different basis for denying coverage here. 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 you are assigned to submit 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. [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.]

Once the question and the explanation are sufficient for posting, I will place it into a Canvas practice quiz. Once all questions have been completed, I will then post the Canvas practice quiz so that students in the class will have the benefit of all of the questions.