Real Estate Finance
Fall Semester 2018
Assignment #1
Monday, August 20, 2018
Tuesday, August 21, 2018
Wednesday, August 22, 2018

Read the following:

- Casebook: Pages 117-129, 1061-1078
- "It Took 90 Minutes for the *Daily News* to 'Steal' The Empire State Building" (news story from the *New York Daily News*, December 2, 2008, which appears below)
- The Freddie Mac Missouri Uniform Note (linked below)
- The Freddie Mac Missouri Single-Family Deed of Trust (linked below)

A copy of the Freddie Mac note and deed of trust form appears on the course webpage and can be found at the following URLs:

Note: http://law.missouri.edu/freyermuth/ref/fall2018/freddiemacnote.pdf

Deed of Trust: http://law.missouri.edu/freyermuth/ref/fall2018/freddiemacdeedoftrust.pdf

"It Took 90 Minutes for the *Daily News* to "Steal" the Empire State Building"
William Sherman, *New York Daily News*, December 2, 2008

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.
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> 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."
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> 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

1. Suppose that Litton purchased a home using the proceeds of a mortgage loan from First Bank. Litton signed a promissory note, in the amount of $200,000, with interest payable at an annual rate of 5% and with a repayment term of 30 years. Assuming that the note Litton signed is otherwise identical to the Freddie Mac Uniform note, what will be the amount of Litton's monthly payments? [Use a mortgage amortization calculator to figure out the answer; you can find such a calculator online on numerous financial websites.]

2. Assume the same facts as in Question 1. Now suppose that Litton fails to make his first monthly payment, which was due on August 1. That payment is now 20 days past due. Under the language of the note, what happens? Does the full unpaid amount of Litton's loan now become automatically due and payable? Does the amount of the unpaid principal go up to account for the interest that accrued on the loan, but that Litton has failed to pay? As of August 20, for what amount or amounts is Litton now liable? [Point to the specific language of the Freddie Mac Uniform note to justify your answer to these questions.]

3. Assume the same facts as in Questions 1 and 2. Now suppose that Litton doesn't make his first payment until September 16. How is the payment applied? After the payment, what is the outstanding balance of the debt? Using the language of the Uniform note, how did you come to that conclusion?

4. What's the relationship between interest rates and types of loans (and types of mortgages)? From the reading and 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." Suppose that Mitchell is buying a home and shopping for a mortgage. In what circumstances would it make sense for Mitchell to get a "balloon-payment" loan that would require him to pay the balance in full in 5 years? In what circumstances would it make sense for him to get an ARM loan? A 15-year fixed rate mortgage? A 30-year fixed rate mortgage? If he needed additional cash to pay for his child's tuition expenses, should he refinance his existing fixed-rate amortizing mortgage at a higher principal amount (i.e., re-borrow some of the equity he's accrued through prior payments and/or market appreciation) or leave his existing mortgage in place and take out a separate "home equity" mortgage loan?

5. 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? Properly understood, who is the victim in these mortgage fraud cases? [Legally, who should it be?]

6. 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 three (3) questions that you have about any of the provision(s) of the form. I will address some of these questions during class discussion on Tuesday, August 21 and Wednesday, August 22, and will address 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 Monday, August 20.**]