

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 2018

MTW 10:20-11:10, Room 5

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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 will also assign portions of certain state and/or federal statutes along with the casebook reading. I will post these statutes on the course website.

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: Don't buy a copy of it! While the**

Black Letter is a very helpful companion to the casebook, the full text of 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.

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:

- Become familiar with the basic structures of the various types of lending transactions in which repayment is secured by an 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, and priority between conflicting mortgage liens and other liens on real estate.
- Become familiar with 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 SUMMATIVE basis, with a final examination at the end of the course.

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 10:20 a.m. Any student that misses more than **twelve (12)** 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 twelve (12) 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.]

Keep in mind (for this class and others) that most 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 potential 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 are likely to take note of your diligence and discipline — and they will not hesitate to comment to inquirers about 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.]

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

<http://www.law.missouri.edu/freyermuth/ref2018/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 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.**

- B. **Final Exam.** There will be an in-class final exam consisting of multiple choice questions and short essay questions.

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) 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

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| I. | Introduction to Mortgage Loans, Servicing, Foreclosure and the Mortgage Market | 117-129
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