REAL ESTATE TRANSACTIONS AND FINANCE (Law 5855)

Prof. Wilson Freyermuth
Fall Semester 2015
MTWR 10:30-11:20, Room 6
Office: 215 Hulston Hall
Office Phone: 882-1105

Course Information and Policies

TEXT AND MATERIALS: 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. 2009). 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: During the first five to six weeks of class, we will focus on the system of land transfer, including: (1) the process of contracting for the sale of land, performance of the contract, and remedies for breach; and (2) the mechanics of the transfer process (deeds, the recording system, the process of title investigation, and title assurance/title insurance. For this portion of the course, I would recommend the same basic study treatises as I recommended for the basic Property course. On reserve, there should be copies of JOHN SPRANKLING, UNDERSTANDING PROPERTY as well as copies of WILLIAM STOEBUCK & DALE WHITMAN, THE LAW OF PROPERTY.

For the rest of the course, we will focus on financing transactions and the law governing mortgages/deeds of trust. For this portion of the course, 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.

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. If your schedule is such that you need to set up a specific appointment, that is fine too. Many students find it easy to communicate with me by e-mail (freyermuthr@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 10:30 am. Any student that misses more than fifteen (15) regularly scheduled classes during the semester (whether excused or not) will be withdrawn from the course.

On rare occasions, you may have to miss a class because of illness, family responsibilities, a job interview, 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 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/retf/fall2015/index.html

Each Friday, I will post reading assignments for the following week’s classes on the Web page. [Past 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 discussion (I refer to these memos euphemistically as “damage control” memos), 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. I also reserve the right to subtract up to two (2) points from a student’s final course average for repeated unpreparedness.

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 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 is a syllabus listing 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 class is included following the syllabus.** For subsequent classes, I will post on the course website a memo containing the assignments for the following week’s classes.
Syllabus

I. Contracting for the Sale of Land
   A. Real Estate Brokers 3-24
   B. Statute of Frauds and Part Performance 24-45
   C. Title Quality 83-96
   D. Time of Performance/Tender 73-83
   D. Risk of Loss/Insurance 96-113
   E. Financing and Financing Contingencies 113-129
   F. Condition of the Property 183-208
   G. Remedies for Breach 45-73

II. Transfer of Land
   A. Deeds, Delivery, and Deed Covenants 131-183 208-222
   B. Title Searching and the Recording System 222-258
   C. Title Insurance 258-275
   D. Closings and RESPA 275-281

III. Introduction to Mortgages and the Mortgage Market 117-129 1061-1074

IV. Rights and Duties Prior to Foreclosure
   A. Possession, Leases, Rents, and Receivers 373-428
   B. Waste 429-438
   C. Insurance and Real Estate Taxes 451-475

V. Foreclosure
   A. Acceleration and Marshalling 669-694
   B. Judicial Foreclosure 696-709
   C. Power of Sale Foreclosure 724-759
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<th>Topic</th>
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<tr>
<td>D</td>
<td>Application of Sale Proceeds</td>
<td>788-796</td>
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<td>E</td>
<td>Statutory Redemption and Reacquisition of Title</td>
<td>796-821</td>
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<td>F</td>
<td>Deficiency Judgments and Antideficiency Legislation</td>
<td>821-826</td>
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<td>G</td>
<td>Deeds in Lieu of Foreclosure and “Short Sales”</td>
<td>630-643, 661-668</td>
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<td>VI</td>
<td>Discharge by Payment</td>
<td>592-623</td>
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<td>VII</td>
<td>Transfer of the Mortgaged Land (Transfer by the Mortgagor)</td>
<td>477-516</td>
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<td>VIII</td>
<td>Transfer of the Mortgage (Transfer by the Mortgagee)</td>
<td>516-542</td>
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<td>IX</td>
<td>Mortgage Substitutes</td>
<td>285-355</td>
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<td>X</td>
<td>Priority Issues</td>
<td>969-1041, 1180-1200</td>
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<td>XI</td>
<td>Bankruptcy</td>
<td>871-961</td>
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Reading: NWBF pages 3-24. Here are discussion questions for this reading assignment. Class discussion will focus on some (but not necessarily all) of these questions.

1. Look at the listing agreement form beginning on page 3. At the time the prospective home seller signs this listing agreement, the broker typically will not yet have begun marketing the property and thus typically will not have identified a particular prospective buyer. In light of this, consider the following questions:

   (a) Why does ¶ 8 of the agreement specify “Possession of the Property shall be delivered to Buyer on _______?”

   (b) Why does ¶ 4 of the agreement specify a price, when the broker will not yet have identified potential buyers (and thus seller will have received no offers)?

2. Suppose Bailey retains Barbara Broker to sell his home, signing a brokerage agreement identical to the listing agreement on page 3. Broker locates a potential purchaser, Jerry, who signs a contract with Bailey to purchase the home for $400,000, but later refuses to close. Broker demands that Bailey pay her the $24,000 commission (6%) provided for in her brokerage agreement. Should Broker be entitled to a commission if:

   (a) Jerry refused to close because he received a job transfer and no longer needed the home?

   (b) Jerry refused to close because he did not qualify for mortgage financing?

   (c) Jerry refused to close because he discovered that Bailey’s home was subject to a neighborhood covenant prohibiting chain link fencing?

3. Missouri continues to adhere to the common law “ready, willing, and able” standard governing the broker’s entitlement to a commission. Should Missouri reject this rule in favor of the Dobbs approach discussed in Drake v. Hosley? Why or why not?

4. In Drake v. Hosley, suppose the Buyers had in fact told Drake on April 5 that they would not have the money to close the sale until May 1 and thus could not close until that date. Would Drake’s subsequent sale of the land on April 11 thereby have breached Drake’s contract with the Buyers? Why or why not?

5. In Drake v. Hosley, if Hosley (the broker) did in fact tell Drake (the seller) that the Buyers would not be able to perform until May 1 — after the scheduled closing date — why doesn’t that excuse Drake from the obligation to tender performance? Would it matter if the Buyers honestly believed that Hosley (the broker) represented them?
6. Gotberg is about to move to Columbia. Gotberg is considering whether to hire a “buyer’s agent” to assist her in locating a house, or whether to instead simply allow a listing agent to show her what homes are available. Why might Gotberg choose to use a buyer’s agent? Why might Gotberg choose not to use a buyer’s agent?

7. Here is the applicable language from Missouri’s “minimum services” statute:

   All exclusive brokerage agreements shall specify that the broker, through the broker or through one or more affiliated licensees, shall provide, at a minimum, the following services:

   (1) Accepting delivery of and presenting to the client or customer offers and counteroffers to buy, sell, or lease the client's or customer's property or the property the client or customer seeks to purchase or lease;

   (2) Assisting the client or customer in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to the offers and the counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived; and

   (3) Answering the client's or customer's questions relating to the offers, counteroffers, notices, and contingencies.

Do you think Missouri’s statutory “minimum service” requirement is a good idea? Why or why not? Does discount brokerage present risks to sellers and/or buyers that might justify such minimum service requirements?