

Table of Contents

PART 1 TITLES AND CONVEYANCES

CHAPTER 1 PRESENT ESTATES

- § 1:1 Introduction
- § 1:2 Overview
- § 1:3 Perpetual freehold estates
- § 1:4 Defeasible estates
- § 1:5 Life estates
- § 1:6 Division of interest
- § 1:7 Life estate frustrations
- § 1:8 The move from life estates

CHAPTER 2 FUTURE INTERESTS

- § 2:1 Fee tail
- § 2:2 Reversions
- § 2:3 Possibilities of reverter
- § 2:4 Rights of reentry
- § 2:5 Remainders and executory interests
- § 2:6 Types of remainders
- § 2:7 Rule against perpetuities
- § 2:8 Unreasonable restraints on alienation
- § 2:9 Effect of prohibition against unreasonable restraints

CHAPTER 3 DEEDS

- § 3:1 Overview
- § 3:2 Informality rules deed transfers
- § 3:3 Deeds should be in writing
- § 3:4 Competent parties; capacity
- § 3:5 Deeds by and to entities and associations; authority
- § 3:6 Restrictions applicable to aliens
- § 3:7 Valuable consideration and intent to convey
- § 3:8 Consideration and undue influence; fraud
- § 3:9 Resulting trust
- § 3:10 Constructive trust
- § 3:11 Legal description in deed
- § 3:12 Approaches to describing real estate
- § 3:13 Resolving ambiguities in descriptions
- § 3:14 Exceptions and reservations
- § 3:15 Role of intention

- § 3:16 Delivery of deed
- § 3:17 Recordation of deeds
- § 3:18 Acceptance
- § 3:19 Beneficiary deeds
- § 3:20 Execution and acknowledgment
- § 3:21 Types of deeds
- § 3:22 Deed warranties; warranty carve outs
- § 3:23 Special warranty deeds
- § 3:24 The quitclaim deed

CHAPTER 4 TITLE

- § 4:1 Chain of title
- § 4:2 Off-record considerations in searching title
- § 4:3 After-acquired title
- § 4:4 Recording statutes
- § 4:5 Types of recording statutes
- § 4:6 Relativity of ownership
- § 4:7 Instruments that convey real estate or affect title
- § 4:8 Acknowledgement as condition of recordation
- § 4:9 Effect of consideration on priorities
- § 4:10 Inquiry notice
- § 4:11 Role of inquiry
- § 4:12 Trend towards requirement of greater inquiry
- § 4:13 Risk of describing multiple parcels

CHAPTER 5 OVERVIEW OF TITLE INSURANCE

- § 5:1 Acknowledgment of chapter information
- § 5:2 Nature of title insurance
- § 5:3 Owner's versus mortgagee's coverage
- § 5:4 Risk elimination or reduction
- § 5:5 Nature of responsibility
- § 5:6 Title insurance forms
- § 5:7 The title insurance commitment
- § 5:8 Uses of a title insurance commitment
- § 5:9 Commitment requirements
- § 5:10 Commitment exceptions
- § 5:11 Closing with a title commitment
- § 5:12 Updating a title commitment
- § 5:13 The agency and the insurer
- § 5:14 The insured closing letter
- § 5:15 Escrows
- § 5:16 Checking the policy

TABLE OF CONTENTS

CHAPTER 6 OWNER'S TITLE INSURANCE

- § 6:1 Acknowledgment of chapter information
- § 6:2 The ALTA owner's policy
- § 6:3 Definition of "insured" in ALTA owner's title policies
- § 6:4 Continuation of coverage—owners' policies
- § 6:5 Owners' policies composition of the insured
- § 6:6 Exclusions for governmental police matters
- § 6:7 Matters created or agreed to by the insured claimant
- § 6:8 Matters created by or known to insured
- § 6:9 Non-imputation endorsement
- § 6:10 Date of coverage and exceptions—ALTA exclusions 3(c)—3(e)
- § 6:11 Creditors' rights (Exclusion 4 to the owners' policies)
- § 6:12 Special exceptions
- § 6:13 Coinsurance

CHAPTER 7 MORTGAGEE'S TITLE INSURANCE

- § 7:1 Acknowledgment of chapter information
- § 7:2 Mortgagee title insurance
- § 7:3 Express coverages in the loan policy
- § 7:4 Express exclusions in the loan policy
- § 7:5 Mortgage modifications

PART 2 BUYING AND SELLING REAL ESTATE

CHAPTER 8 THE SALES TRANSACTION OVERVIEW

- § 8:1 Initial progress of the residential transaction
- § 8:2 Initial progress of the commercial transaction
- § 8:3 Seller's response
- § 8:4 Checking it out—due diligence
- § 8:5 Contracting caveats
- § 8:6 Letter of intent
- § 8:7 Expectations

CHAPTER 9 THE SALE CONTRACT BASICS

- § 9:1 The parties
- § 9:2 Acceptance of an offer to purchase
- § 9:3 Property description
- § 9:4 Survey
- § 9:5 Quantity of property

- § 9:6 Ancillary rights
- § 9:7 Fixtures
- § 9:8 Purchase price
- § 9:9 Earnest deposit
- § 9:10 Acquiring property “subject to” a mortgage
- § 9:11 Reducing the risk of selling “subject to” a mortgage
- § 9:12 Acquiring property with a mortgage assumption
- § 9:13 Purchaser’s view on acquiring mortgaged property
- § 9:14 Due on sale clauses
- § 9:15 Purchase money financing
- § 9:16 Closing and possession
- § 9:17 Possession before closing
- § 9:18 Delayed possession
- § 9:19 Time of the essence in closing
- § 9:20 Closing adjustments for expense items
- § 9:21 Closing adjustments for income items
- § 9:22 Title and conveyance
- § 9:23 Attorney use of forms

CHAPTER 10 THE SALE CONTRACT— ADDITIONAL ISSUES

- § 10:1 Representations and warranties
- § 10:2 Contingencies and diligence
- § 10:3 Types of contractual conditions
- § 10:4 Drafting contingencies
- § 10:5 Title contingencies and survey
- § 10:6 Government restrictions diligence
- § 10:7 Financing contingencies
- § 10:8 Environmental due diligence
- § 10:9 Mutuality of obligation and contingency satisfaction
- § 10:10 Earnest deposit following failure of contingency
- § 10:11 Failure of a contingency
- § 10:12 Implied warranty of habitability
- § 10:13 Waiver of conditions
- § 10:14 Damage or destruction (risk of loss)
- § 10:15 Alternatives relating to damage or destruction
- § 10:16 Missouri rule relating to damage or destruction
- § 10:17 Contract relating to damage or destruction
- § 10:18 Drafting a better damage or destruction clause
- § 10:19 Default and remedies
- § 10:20 Integration clause; merger

CHAPTER 11 REAL ESTATE BROKERS

- § 11:1 Introduction

TABLE OF CONTENTS

- § 11:2 Broker defined
- § 11:3 Licensure questions
- § 11:4 Agency
- § 11:5 Fiduciary duties
- § 11:6 The new model
- § 11:7 Dual agency under V.A.M.S. §§ 339.710 to 339.860
- § 11:8 Middlemen
- § 11:9 Real estate forms
- § 11:10 Limitations on broker use of forms
- § 11:11 Permitted forms for brokers
- § 11:12 Brokers prohibited from giving legal advice

CHAPTER 12 LISTING AGREEMENTS

- § 12:1 Chapter note
- § 12:2 Types of listing agreements
- § 12:3 Listing agreement issues
- § 12:4 When commission is earned
- § 12:5 Net listings
- § 12:6 Buyer's brokers
- § 12:7 Implied listing agreements
- § 12:8 Termination of brokerage agreements—generally
- § 12:9 Termination of listing agreement by broker abandonment
- § 12:10 Termination by agreement
- § 12:11 Lease commissions

PART 3 FINANCING REAL ESTATE

CHAPTER 13 MORTGAGE LAW OVERVIEW

- § 13:1 Historical antecedents
- § 13:2 Distinction between mortgages and deeds of trust
- § 13:3 Related legal issues
- § 13:4 Promissory notes
- § 13:5 Requisites for a valid mortgage
- § 13:6 Mechanics of priority
- § 13:7 Priority as between mechanic's liens and mortgages;
construction loans
- § 13:8 Purchase money mortgages
- § 13:9 Future advances—common law
- § 13:10 Advances to protect mortgage security
- § 13:11 Optional compared to mandatory advances
- § 13:12 Future advances—statutory
- § 13:13 After-acquired property
- § 13:14 Transfer of secured obligation

- § 13:15 Transfer of mortgages securing nonrecourse obligations
- § 13:16 Estoppel certificates
- § 13:17 Analyzing the transfer
- § 13:18 Equitable subrogation
- § 13:19 Satisfaction of debt distinguished from transfer of debt
- § 13:20 Due-on-sale clauses—Generally
- § 13:21 —Enforceability
- § 13:22 Efforts to avoid due on sale acceleration

CHAPTER 14 SATISFACTION AND RELEASE OF MORTGAGES

- § 14:1 Mortgage prepayment
- § 14:2 When prepayment available
- § 14:3 Partial releases
- § 14:4 Mechanics of release
- § 14:5 Identity of releasor
- § 14:6 Penalty for failure or refusal to release deed of trust
- § 14:7 Merger
- § 14:8 Refinancing and replacement mortgages

CHAPTER 15 NONMORTGAGE FINANCING TECHNIQUES

- § 15:1 Alternative approaches to real estate security
- § 15:2 Long term leases
- § 15:3 Letters of credit
- § 15:4 Termination of letters of credit
- § 15:5 Account party risks
- § 15:6 Common law debtor protection
- § 15:7 Contracts for deed—definition
- § 15:8 Seller concept in contract for deed
- § 15:9 Seller disadvantages to contracts for deeds
- § 15:10 Purchaser disadvantages to contracts for deeds
- § 15:11 Contract vendor's rights upon vendee's abandonment
- § 15:12 Other attributes of contract for deed
- § 15:13 The absolute deed as mortgage

PART 4 MORTGAGE DOCUMENTS

CHAPTER 16 THE PARTIES AND THE GRANT

- § 16:1 Parties to the deed of trust
- § 16:2 Delivery and acceptance

TABLE OF CONTENTS

- § 16:3 Consideration and capacity
- § 16:4 Trustee role
- § 16:5 The grant
- § 16:6 Property included
- § 16:7 Encumbering personalty
- § 16:8 Blanket mortgages
- § 16:9 Description of secured debt

CHAPTER 17 MORTGAGE COVENANTS

- § 17:1 Basics
- § 17:2 Lien protection covenants
- § 17:3 Risk of prior liens
- § 17:4 Property insurance
- § 17:5 Defeated expectations of coverage
- § 17:6 Open mortgage clause
- § 17:7 Union mortgage clause
- § 17:8 Mortgages of leased property
- § 17:9 Mortgage of tenant's interest
- § 17:10 Right to possession
- § 17:11 Rent assignments
- § 17:12 Tenant perspective
- § 17:13 Determining possession
- § 17:14 Contractual modification
- § 17:15 Securing tenant acceptance

CHAPTER 18 CLAUSES RELATING TO CONDITION OF SECURITY

- § 18:1 Repairs and waste
- § 18:2 Responses to deterioration of security
- § 18:3 Right of cure and acceleration
- § 18:4 Eminent domain
- § 18:5 Miscellaneous

CHAPTER 19 CLAUSES RELATING TO TRUSTEE

- § 19:1 Trustee appointment and resignation
- § 19:2 Successor trustees
- § 19:3 Trustee discretion, indemnity and liability
- § 19:4 Trustee compensation

CHAPTER 20 JUNIOR LIENS

- § 20:1 Second mortgages—drafting considerations
- § 20:2 Residential second mortgages

- § 20:3 Wraparound mortgages
- § 20:4 Wrap area of conflict

PART 5 DEVELOPING REAL ESTATE

CHAPTER 21 CONDOMINIUMS

- § 21:1 Acknowledgment of chapter information
- § 21:2 Overview and scope of this chapter
- § 21:3 Basic condominium concepts
- § 21:4 Features and elements of a condominium
- § 21:5 Declaration
- § 21:6 Unit owners' association
- § 21:7 Condominium conveyancing
- § 21:8 Democratic principles and control of the unit owners' association
- § 21:9 Long-term developer deals
- § 21:10 Special declarant rights
- § 21:11 Declarant development rights
- § 21:12 Condominium association bylaws
- § 21:13 Unit owners
- § 21:14 Unit owner rights; use restrictions
- § 21:15 Condominium association officers and directors
- § 21:16 Functions peculiar to condominium associations
- § 21:17 Financing
- § 21:18 Association financing of special projects
- § 21:19 Liens
- § 21:20 Special assessments and buyer's due diligence
- § 21:21 Public land-use regulations
- § 21:22 Common elements
- § 21:23 Alteration of common elements
- § 21:24 Limited common elements
- § 21:25 Allocations of common area interests and expenses
- § 21:26 Owners' duties to the association
- § 21:27 Insurance
- § 21:28 Damage or destruction
- § 21:29 Condemnation
- § 21:30 Termination
- § 21:31 Protection for original condominium purchasers
- § 21:32 Protection for condominium purchasers on resale
- § 21:33 Protection in conversion condominiums

CHAPTER 22 OVERVIEW OF SUBDIVISION LAW

- § 22:1 Background

TABLE OF CONTENTS

§ 22:2	Subdivision ordinances—four purposes
§ 22:3	Enforcement of subdivision ordinances
§ 22:4	Subdivision compliance
§ 22:5	Minor subdivisions and boundary adjustments
§ 22:6	Subdivision enabling statutes
§ 22:7	Expansion of statutory subdivision authority
§ 22:8	1963 Statute
§ 22:9	A constitutional dimension to subdivision issues
§ 22:10	A greater scope for municipal regulation
§ 22:11	Federal constitutional analysis
§ 22:12	Contesting arbitrary requirements
§ 22:13	Platted easements may be public or private
§ 22:14	Protecting access to neighboring land
§ 22:15	Ambiguous plats

CHAPTER 23 SUBDIVISION INDENTURES

§ 23:1	Background—deed restrictions and conditions subsequent
§ 23:2	Hostility to potential forfeiture
§ 23:3	Covenants
§ 23:4	Subdivision indentures
§ 23:5	Subdivision assessments
§ 23:6	Administering assessment provisions
§ 23:7	Amendment and release of restrictions
§ 23:8	Termination of restrictions
§ 23:9	Termination
§ 23:10	Trusteeship
§ 23:11	Removal of trustees
§ 23:12	Trustee succession
§ 23:13	Voting
§ 23:14	Architectural review

CHAPTER 24 ZONING AND THE CONSTITUTION

§ 24:1	Zoning overview
§ 24:2	History of zoning
§ 24:3	Missouri Supreme Court and zoning constitutionality
§ 24:4	Zoning concepts grow
§ 24:5	Substantive unconstitutionality of zoning
§ 24:6	Substantive attacks—miscellaneous issues
§ 24:7	Procedural unconstitutionality of zoning
§ 24:8	Role of value in constitutionality of zoning
§ 24:9	Purchase with intent to rezone

CHAPTER 25 STATE AND LOCAL ZONING AUTHORITY

- § 25:1 Authority for zoning
- § 25:2 Authority for county zoning
- § 25:3 Class structure
- § 25:4 Municipal zoning
- § 25:5 Zoning ordinances

CHAPTER 26 REDEVELOPMENT INCENTIVES

- § 26:1 Overview
- § 26:2 Tax increment financing
- § 26:3 Urban redevelopment corporation law—V.A.M.S. Chapter 353
- § 26:4 Transportation development districts
- § 26:5 Community improvement districts
- § 26:6 Industrial development financing
- § 26:7 Miscellaneous redevelopment incentives
- § 26:8 Constitutional issues in redevelopment incentives and public use

PART 6 EASEMENTS AND LICENSES

CHAPTER 27 OVERVIEW

- § 27:1 Introduction
- § 27:2 Appurtenant easements
- § 27:3 Easements in gross
- § 27:4 Licenses
- § 27:5 Profits a prendre
- § 27:6 Municipal franchises

CHAPTER 28 CREATION AND TERMINATION OF RIGHTS

- § 28:1 Oral grant
- § 28:2 Licensee reliance; easement by estoppel
- § 28:3 Written grants
- § 28:4 Property description in easements
- § 28:5 Easements by operation of law
- § 28:6 Situations giving rise to implied easements
- § 28:7 Elements of implied easements
- § 28:8 Requirement of necessity for implied easements
- § 28:9 Implied easements—visibility
- § 28:10 Prescriptive easements

TABLE OF CONTENTS

- § 28:11 Prescriptive easements shown to be permissive
- § 28:12 Use of prescriptive easements
- § 28:13 Condemning private access easements
- § 28:14 Significance of public easements
- § 28:15 Creation of public easements
- § 28:16 Expiration of easements
- § 28:17 Release of easements
- § 28:18 Termination of easements by merger
- § 28:19 Termination of easements by abandonment
- § 28:20 Termination by adverse possession

CHAPTER 29 RIGHTS AND OBLIGATIONS OF THE PARTIES

- § 29:1 Approach to construction of easement grants
- § 29:2 Interpretation to meet expectations of parties
- § 29:3 Fee or easement
- § 29:4 Duration of easement
- § 29:5 Rules of construction of nonspecific easements
- § 29:6 Cases supporting use of servient estate
- § 29:7 Use of servient estate
- § 29:8 Limits on landowner's use of servient estate
- § 29:9 Easement installations
- § 29:10 Interpretation of platted easements
- § 29:11 Description of easement area
- § 29:12 Concurrent easements
- § 29:13 Duty of maintenance and repair
- § 29:14 Aesthetic benefit of the servient estate
- § 29:15 Liability and indemnity
- § 29:16 Use of appurtenant easement by the owner of the dominant estate

CHAPTER 30 ROADS, STREETS, HIGHWAYS AND DRIVES

- § 30:1 General
- § 30:2 Creation of public roads by grant
- § 30:3 Creation of public roads by private action
- § 30:4 Effect of public use
- § 30:5 Condemnation for public roads
- § 30:6 Prescription for public roads
- § 30:7 Common law dedication for public roads
- § 30:8 Termination of public ways
- § 30:9 Miscellaneous statutes terminating public roads
- § 30:10 Ownership of underlying fee

PART 7 LEASING REAL ESTATE

CHAPTER 31 TENANCIES

- § 31:1 Realizing income from real estate
- § 31:2 Importance of proper categorization
- § 31:3 Distinction between lease and license
- § 31:4 Disadvantages of oral agreements
- § 31:5 Exceptions to statute of frauds
- § 31:6 Multiple documents and statute of frauds
- § 31:7 Estoppel to avoid statute of frauds
- § 31:8 Leases that are partially oral, partially written

CHAPTER 32 SPECIFIC TENANCIES

- § 32:1 Statutory oral tenancies
- § 32:2 Challenging landlord–tenant statutes
- § 32:3 Periodic tenancies
- § 32:4 Terms by operation of statute
- § 32:5 Termination of month-to-month tenancies
- § 32:6 Difficulties in termination of month-to-month leases
- § 32:7 Premium on consistency
- § 32:8 Miscellaneous termination issues
- § 32:9 Increasing rent on month-to-month tenancy
- § 32:10 Tenancy for term of years
- § 32:11 Requirements for a term of years
- § 32:12 Termination of lease for years
- § 32:13 Rent upon termination of term of years
- § 32:14 Importance of consent to holdover’s rights
- § 32:15 Statutory protection from holdover tenants
- § 32:16 Specialized occupancy

CHAPTER 33 PERIPHERAL LEASE TRANSACTIONS

- § 33:1 Introduction
- § 33:2 Tenant risk from rent severance
- § 33:3 Estoppel letters
- § 33:4 Privity
- § 33:5 Statutory considerations relating to landlord transfers
- § 33:6 Attornment to a stranger

CHAPTER 34 TRANSFER OF TENANT’S INTEREST

- § 34:1 Transfer of tenant’s interest

TABLE OF CONTENTS

- § 34:2 Assignment of tenant's interest
- § 34:3 Original tenant residual liability following transfer
- § 34:4 Limitations on assignment and sublease
- § 34:5 Factors in consent to transfer
- § 34:6 Subleases
- § 34:7 Subtenants lack privity
- § 34:8 Landlord jeopardy

CHAPTER 35 OPTIONS, FIRST REFUSALS, EXTENSIONS AND RENEWALS

- § 35:1 Restrictions as against remote transferees
- § 35:2 Waiver of restriction against transfer
- § 35:3 Transfer of percentage leases
- § 35:4 Transfer of percentage leases—implied restrictions
- § 35:5 Options and rights of first refusal
- § 35:6 Setting the option exercise price
- § 35:7 Factors that tend to make appraisals reliable
- § 35:8 Evaluation clauses using appraisals
- § 35:9 Drafting the option
- § 35:10 Perpetuities and restraints on alienation
- § 35:11 Exercise of option
- § 35:12 Rights of refusal
- § 35:13 Recordation of options and refusals
- § 35:14 Alternatives to classic right of refusal
- § 35:15 Renewals and extensions; exercise and notice issues
- § 35:16 Agreement to agree
- § 35:17 Options to terminate

PART 8 LEASE DOCUMENTS

CHAPTER 36 THE LEASE-ESSENTIAL TERMS

- § 36:1 Overview
- § 36:2 In general
- § 36:3 Parties and other leasing diligence and contingencies
- § 36:4 Lease cosigners and guarantors
- § 36:5 Leased property
- § 36:6 Encumbrances impacting leased property
- § 36:7 Common areas
- § 36:8 Rent
- § 36:9 Additional rent
- § 36:10 Late charges
- § 36:11 Term

- § 36:12 Drafting considerations
- § 36:13 Hazards of oral lease agreements

CHAPTER 37 THE LEASE—EXPENSES AND RENTAL ADJUSTERS

- § 37:1 Rationale
- § 37:2 Types of indices
- § 37:3 Consumer Price Index
- § 37:4 Perils of rent escalation
- § 37:5 Remedy for ambiguous formula
- § 37:6 Failed rent workouts
- § 37:7 Percentage rent
- § 37:8 Issues in percentage rent clauses
- § 37:9 Use of premises leased under percentage leases
- § 37:10 Sales audits under percentage leases
- § 37:11 Expense escalators
- § 37:12 Real estate tax expense escalators

CHAPTER 38 THE LEASE—IMPROVEMENTS

- § 38:1 Common repair and maintenance disputes
- § 38:2 Exterior repairs
- § 38:3 Context of repair clause impacts interpretation
- § 38:4 Harmonizing repair related provisions
- § 38:5 Structural repairs and maintenance
- § 38:6 Restrictions on tenant improvements
- § 38:7 Leasing unimproved space
- § 38:8 Tenant financing secured by lease
- § 38:9 Landlord liability by reason of unjust enrichment
- § 38:10 Ownership of improvements—general rules
- § 38:11 Fixtures as between landlord and tenant
- § 38:12 Distinguishing fixtures from personalty

CHAPTER 39 INSURANCE AND CONDEMNATION

- § 39:1 Liability insurance
- § 39:2 Protecting landlord from liability
- § 39:3 Property insurance
- § 39:4 Co-insurance
- § 39:5 Payment for insurance
- § 39:6 Waiver of subrogation
- § 39:7 Responsibility for casualty loss
- § 39:8 Redelivery clause subtleties
- § 39:9 Claims by neighboring tenants

TABLE OF CONTENTS

- § 39:10 Duty to rebuild
- § 39:11 Insufficient insurance proceeds
- § 39:12 Insurance claims
- § 39:13 Condemnation awards
- § 39:14 Tenant's rights in condemnation

CHAPTER 40 ENFORCEMENT

- § 40:1 Default
- § 40:2 Three classic landlord remedies
- § 40:3 Reentry of the premises and landlord mitigation
- § 40:4 Additional landlord rights questionable
- § 40:5 Landlord acceptance of surrender
- § 40:6 Entry and reletting remedy
- § 40:7 Option to terminate
- § 40:8 Special rights upon default

CHAPTER 41 RESTRICTIONS AND RETURN OF PREMISES

- § 41:1 Use restrictions
- § 41:2 External restrictions impacting tenant use
- § 41:3 Waste and nuisance
- § 41:4 Exclusivity clauses
- § 41:5 Restrictions on assignment and subleasing
- § 41:6 Environmental issues
- § 41:7 Subordination
- § 41:8 Landlord liability after sale
- § 41:9 Return of premises—security deposit
- § 41:10 —condition of premises
- § 41:11 —personal property
- § 41:12 Fair housing

Volume 18A

PART 9 RESOLVING REAL ESTATE DISPUTES

CHAPTER 42 ADDRESSING REAL ESTATE DISPUTES—OVERVIEW

- § 42:1 Settlement
- § 42:2 Common real estate disputes
- § 42:3 The judgment

§ 42:4 Redundancies in the settlement/litigation model

CHAPTER 43 ALTERNATIVE DISPUTE RESOLUTION

- § 43:1 General
- § 43:2 Arbitration overview
- § 43:3 Mediation overview
- § 43:4 Med/arb
- § 43:5 Other ADR—overview
- § 43:6 Dispute resolution design—pre-dispute
- § 43:7 Dispute—resolution design (post-dispute)
- § 43:8 Dispute avoidance (pre-dispute)
- § 43:9 Procedural controls on litigation
- § 43:10 Substantive controls on dispute resolution

CHAPTER 44 TRADITIONAL ADR—ARBITRATION

- § 44:1 Arbitration requires consent
- § 44:2 Appealability of ruling denying motion to stay litigation
- § 44:3 Two bites
- § 44:4 Appeal of ruling in motion to stay arbitration
- § 44:5 When agreed to
- § 44:6 Consent at issue
- § 44:7 Pre-dispute arbitration commitment decisions
- § 44:8 Arbitration cautions
- § 44:9 Arbitration protocols
- § 44:10 Modifying arbitration protocols
- § 44:11 Limiting arbitration
- § 44:12 Designer arbitration
- § 44:13 Missouri and federal arbitration acts compared
- § 44:14 Waiver of arbitration right
- § 44:15 Substantive appeals of awards in arbitration
- § 44:16 Arbitration remedies
- § 44:17 “Baseball” arbitration
- § 44:18 Discovery in arbitration
- § 44:19 Evidence in arbitration
- § 44:20 Enforcement of arbitration award

CHAPTER 45 TRADITIONAL ADR—MEDIATION

- § 45:1 Defined
- § 45:2 Advantages and disadvantages of mediation
- § 45:3 What is an appropriate settlement?

TABLE OF CONTENTS

- § 45:4 Issues to consider in preparation for mediation
- § 45:5 Pre-dispute vs. post-dispute mediation
- § 45:6 Pre-dispute mediation in real estate agreements
- § 45:7 Setting up a mediation

PART 10 VENDOR-PURCHASER ACTIONS

CHAPTER 46 LEGAL ACTIONS FOR BREACH OF REAL ESTATE CONTRACT

- § 46:1 Dynamics
- § 46:2 Quick fixes and the earnest deposit
- § 46:3 Types of breach
- § 46:4 Anticipatory breach
- § 46:5 Types of damages
- § 46:6 Actual damages in favor of seller
- § 46:7 Extra hazard of overpaying for property
- § 46:8 Actual damages in favor of buyer
- § 46:9 Recovery of consequential damages
- § 46:10 Purpose of liquidated damages
- § 46:11 Enforcement of liquidated damages
- § 46:12 Liquidated damages may fail as a cap on damages
- § 46:13 Liquidated damages in sales of new residences
- § 46:14 Liquidated damages and specific performance
- § 46:15 Statute of limitations

CHAPTER 47 EQUITABLE ACTIONS ON REAL ESTATE CONTRACTS

- § 47:1 Suit for specific performance
- § 47:2 Contractual clarity key to achieving specific performance
- § 47:3 Specific performance and the statute of frauds
- § 47:4 Breach of oral contract; statute of frauds; merger
- § 47:5 Partial performance
- § 47:6 Material elements of a sufficient writing
- § 47:7 Specific performance in favor of real estate sellers
- § 47:8 Mutuality in specific performance
- § 47:9 Tender to support specific performance
- § 47:10 Discretion in specific performance
- § 47:11 Delay in pursuing specific performance
- § 47:12 The three “re . . .” remedies
- § 47:13 Rescission
- § 47:14 Reformation

- § 47:15 Defenses to reformation
- § 47:16 Restitution
- § 47:17 Constructive trust
- § 47:18 Lis pendens
- § 47:19 Immunity for lis pendens filings—reasonableness, good faith or malice

CHAPTER 48 ACTIONS FOR BREACH OF EXPRESS AND IMPLIED WARRANTIES

- § 48:1 Breach of express warranty
- § 48:2 Damages for breach of express warranty
- § 48:3 Express warranties and merger
- § 48:4 Implied warranties in Missouri—traditional rule
- § 48:5 —current rule
- § 48:6 Implied warranties and merger
- § 48:7 Implied warranties and disclaimers
- § 48:8 Types of defect covered by implied warranty
- § 48:9 Situations covered by the implied warranty
- § 48:10 Damages for breach of implied warranty

CHAPTER 49 REAL ESTATE LICENSEE ISSUES

- § 49:1 The Missouri Real Estate Commission
- § 49:2 Licensee discipline
- § 49:3 Real estate commission regulations
- § 49:4 Entity choices for real estate brokerage practice
- § 49:5 Real estate commission audits
- § 49:6 Administrative hearing commission
- § 49:7 Appeal from real estate commission sanctions
- § 49:8 Effect of broker regulatory violation

PART 11 LANDLORD–TENANT ACTIONS

CHAPTER 50 LEASE ENFORCEMENT OVERVIEW

- § 50:1 First principles
- § 50:2 Security deposits
- § 50:3 Residential lease enforcement issues
- § 50:4 Commercial lease enforcement issues
- § 50:5 Ground lease enforcement issues
- § 50:6 Farm lease enforcement issues

TABLE OF CONTENTS

CHAPTER 51 TENANT BREACH OF LEASE

- § 51:1 Basic litigation options
- § 51:2 Claims for past and future rent
- § 51:3 Claims for consequential damages
- § 51:4 Damages for waste
- § 51:5 Attorney fees
- § 51:6 The risk of self-help repossession
- § 51:7 Dealing the tenant out
- § 51:8 Achieving court-ordered eviction
- § 51:9 Rent and possession action
- § 51:10 Rent and possession for purchasers of real estate
- § 51:11 Lease administration
- § 51:12 Trial *de novo*
- § 51:13 Requirement for accurate rental demand
- § 51:14 Mortgagee rights in rent and possession
- § 51:15 Unlawful detainer action under V.A.M.S. chapter 534
- § 51:16 Unlawful detainer procedure
- § 51:17 Unlawful detainer remedies
- § 51:18 Counterclaims and affirmative defenses
- § 51:19 Level of breaches justifying forfeiture
- § 51:20 Risk of landlord waiver
- § 51:21 Other aspects of strict requirement for common law forfeiture
- § 51:22 New emphasis
- § 51:23 A bankruptcy court looks at lease termination
- § 51:24 Trial *de novo* and appeal of unlawful detainer judgment
- § 51:25 Ejectment

CHAPTER 52 TENANT CLAIMS AGAINST LANDLORD

- § 52:1 Tenant claims against the landlord
- § 52:2 Landlord breach generally does not obviate rent obligation
- § 52:3 Damages for landlord breach
- § 52:4 Fraud in the inducement to counter landlord claims
- § 52:5 Surrender as a defense
- § 52:6 Tenant claims for lost profits
- § 52:7 Constructive eviction
- § 52:8 Breach of landlord duty as constructive eviction
- § 52:9 Abandonment of premises to seal constructive eviction
- § 52:10 Landlord acceptance of rent following tenant default
- § 52:11 Role of possession
- § 52:12 Forcible entry and detainer
- § 52:13 Key elements of forcible entry and detainer
- § 52:14 Damages for forcible entry and detainer

- § 52:15 Turning off the utilities
- § 52:16 Deficient housing statute
- § 52:17 Deficient housing statute developments
- § 52:18 Implied protection for residential tenants
- § 52:19 *King's* heritage
- § 52:20 *King* and the commercial lease
- § 52:21 Landlord liability for defective repairs
- § 52:22 Conversion of personal property
- § 52:23 Retaliatory eviction

CHAPTER 53 PERSONAL INJURY LIABILITY RISK ALLOCATION

- § 53:1 Liability for personal injury—general rule
- § 53:2 —superior knowledge
- § 53:3 —retention of control
- § 53:4 Liability where landlord responsible for repairs
- § 53:5 Liability for personal injury to tenant—common area
- § 53:6 Ice and snow and the common use rule
- § 53:7 Landlord liability for criminal acts—traditional rule
- § 53:8 Liability where lease is for public use

CHAPTER 54 MISCELLANEOUS ENFORCEMENT TOOLS

- § 54:1 Declaratory judgment
- § 54:2 Enforcement of implied covenants
- § 54:3 Implied covenants in favor of tenant
- § 54:4 Landlord's liens
- § 54:5 Attachment

PART 12 BORROWER/LENDER ACTIONS

CHAPTER 55 SUITS ON PROMISSORY NOTES

- § 55:1 Promissory notes
- § 55:2 Prima facie case
- § 55:3 Demand
- § 55:4 Acceleration
- § 55:5 Different capacities of note execution
- § 55:6 Release of parties liable as accommodation parties
- § 55:7 Rights of holder
- § 55:8 Damages

TABLE OF CONTENTS

- § 55:9 Defenses—statute of limitations
- § 55:10 —payment
- § 55:11 Payment—burden of proof
- § 55:12 Defenses—set-off
- § 55:13 —failure of consideration

CHAPTER 56 SUITS ON GUARANTIES

- § 56:1 Denial syndrome
- § 56:2 Multiple defenses
- § 56:3 Waiver of defenses
- § 56:4 Defending claims on institutional guaranties
- § 56:5 Past consideration
- § 56:6 Summary judgments and guaranties
- § 56:7 Fraud as a defense to liability on a guaranty
- § 56:8 Enhancing enforceability with administration
- § 56:9 Evaluating liability claims
- § 56:10 Being broke is the best defense
- § 56:11 Lucky lack of notice—Missouri rule for guaranties
- § 56:12 Contents of notice—type of sale
- § 56:13 Termination of guaranty
- § 56:14 Contribution among co-guarantors

CHAPTER 57 MORTGAGE LITIGATION ISSUES

- § 57:1 General
- § 57:2 Prepayment
- § 57:3 Penalty for refusal to release

CHAPTER 58 FORECLOSURE OVERVIEW

- § 58:1 Impact of power of sale foreclosure
- § 58:2 Impediments to foreclosure
- § 58:3 Other avenues for foreclosure relief
- § 58:4 Constitutionality of power of sale foreclosure
- § 58:5 Judicial foreclosure—when appropriate
- § 58:6 Distinction between sale of realty and personalty
- § 58:7 Public notice does not make a sale public
- § 58:8 Risk in connection with mixed sales

CHAPTER 59 FORECLOSURE PRE-SALE PROCESS

- § 59:1 Establishing right to foreclose
- § 59:2 Evaluation checklists upon default of secured obligation
- § 59:3 Post default planning

- § 59:4 Acceleration
- § 59:5 Foreclosing trustee
- § 59:6 Notice of sale
- § 59:7 Publication venue
- § 59:8 Acceptable newspapers
- § 59:9 Duration of publication
- § 59:10 Content of notice
- § 59:11 Defects in notice

CHAPTER 60 FORECLOSURE SALE

- § 60:1 Location of foreclosure sale
- § 60:2 Time of foreclosure sale
- § 60:3 Chilling the sale
- § 60:4 Sales in bulk or in parcel
- § 60:5 Crying the sale
- § 60:6 Postponement of sale
- § 60:7 Memorandum of sale
- § 60:8 Paying for foreclosure purchase
- § 60:9 The trustee's deed
- § 60:10 Factors affecting holder's bid
- § 60:11 Distress sales and caveat emptor
- § 60:12 Considerations for collateral obligors
- § 60:13 Foreclosure impact on junior encumbrances
- § 60:14 Possession following foreclosure
- § 60:15 Distribution of foreclosure sale proceeds
- § 60:16 Owner's suit to stop the foreclosure sale
- § 60:17 Junior lienor efforts to stop foreclosure sale
- § 60:18 Marshalling assets
- § 60:19 Marshalling in connection with lot sales; the vendee's lien

CHAPTER 61 POST-SALE ISSUES

- § 61:1 Statutory redemption—general
- § 61:2 —bond
- § 61:3 —who can redeem
- § 61:4 Equitable redemption
- § 61:5 Equitable redemption as against innocent purchaser
- § 61:6 Suit for resale
- § 61:7 Deficiency judgment
- § 61:8 Insurance, waste
- § 61:9 Wrongful foreclosure

TABLE OF CONTENTS

**PART 13 CLAIMS INVOLVING
GOVERNMENT**

**CHAPTER 62 ZONING ACTIONS AT THE
LOCAL LEVEL**

- § 62:1 General
- § 62:2 Threshold zoning issues
- § 62:3 When the exhaustion requirement arises
- § 62:4 Exceptions to exhaustion requirement
- § 62:5 Standing to contest zoning decisions
- § 62:6 Rules of standing
- § 62:7 Substance reigns
- § 62:8 Initiative and referendum
- § 62:9 Estoppel in zoning matters
- § 62:10 Zoning flexibility
- § 62:11 Special use permits
- § 62:12 Character of special use permit applications
- § 62:13 Uses available by special use permits
- § 62:14 Special use permits in a Euclidean zoning scheme
- § 62:15 Successor's rights in special use permits
- § 62:16 Statutory authority for variances
- § 62:17 Elements of the variance
- § 62:18 Public policy should support reasonable variances
- § 62:19 Use variances
- § 62:20 Municipal zoning enforcement
- § 62:21 Nonconforming uses

**CHAPTER 63 JUDICIAL REVIEW OF
LOCAL ZONING DECISIONS**

- § 63:1 Overview
- § 63:2 Categories of reviewable land use decisions
- § 63:3 Standards of review
- § 63:4 More on administrative versus legislative reviewable
decisions; nondelegation
- § 63:5 Appeal to board of adjustment
- § 63:6 Appeal from the board of adjustment—certiorari to the circuit
court
- § 63:7 Contested case
- § 63:8 Declaratory judgment and equitable relief

CHAPTER 64 CONDEMNATION

- § 64:1 The five “P’s”
- § 64:2 Power—state constitution

REAL ESTATE LAW—TRANSACTIONS

- § 64:3 —state statutes; public purpose, necessity and good faith negotiations
- § 64:4 Power to condemn other public property—intergovernmental conflicts
- § 64:5 Process—determination of power
- § 64:6 —pre-filing; the right to survey
- § 64:7 —good faith negotiations
- § 64:8 —commissioners' hearing and award
- § 64:9 —amount and payment of award
- § 64:10 Property—scope of taking
- § 64:11 —maximum injury rule; project definition issues
- § 64:12 —special damage to property retained
- § 64:13 —tripartite rule of unity
- § 64:14 —interests subject to condemnation
- § 64:15 Price (damages)—general
- § 64:16 —comparable sales or market approach
- § 64:17 —project influence doctrine; special benefits
- § 64:18 —replacement cost approach
- § 64:19 —income approach
- § 64:20 —income method—lot method
- § 64:21 —landowner opinion testimony
- § 64:22 —special evidence
- § 64:23 Payment of the award
- § 64:24 Payment—abandonment by condemnor
- § 64:25 —recovery of commissioner's award
- § 64:26 Inverse condemnation
- § 64:27 —zoning
- § 64:28 Private condemnation

CHAPTER 65 REAL ESTATE TAX APPEALS

- § 65:1 Overview of Missouri real estate taxation
- § 65:2 Administrative appeal
- § 65:3 Basis for review—value
- § 65:4 —classification
- § 65:5 Agricultural and horticultural land
- § 65:6 Basis for review—discrimination
- § 65:7 Administrative review
- § 65:8 Direct court review
- § 65:9 Court challenge to state tax commission decision
- § 65:10 Payment of taxes without protest
- § 65:11 Exemption

TABLE OF CONTENTS

**PART 14 DISPUTES BETWEEN
NEIGHBORS**

CHAPTER 66 ADVERSE POSSESSION

- § 66:1 Overview
- § 66:2 Statutory basis for adverse possession
- § 66:3 Elements of adverse possession
- § 66:4 Hostile possession
- § 66:5 —claim of right
- § 66:6 —trespass
- § 66:7 —inferred boundaries
- § 66:8 Actual possession—general
- § 66:9 —color of title
- § 66:10 — —how created
- § 66:11 —wild lands
- § 66:12 Open and notorious
- § 66:13 Exclusivity
- § 66:14 Continuous possession
- § 66:15 Tacking of possession as between grantor and grantee
- § 66:16 Possession as against government and pious uses

**CHAPTER 67 CREATION OF A PRIVATE
EASEMENT BY PRESCRIPTION**

- § 67:1 General
- § 67:2 Elements—continuous and uninterrupted for ten years
- § 67:3 —adverse
- § 67:4 —visible
- § 67:5 Public access to private property and shopping centers
- § 67:6 Use of prescriptive easement

CHAPTER 68 SUBDIVISION DISPUTES

- § 68:1 The subdivision indenture
- § 68:2 Model for enforcement of indentures
- § 68:3 Subdivision indenture enforcement; waiver; association formalities
- § 68:4 Enforcement of indentures at law
- § 68:5 Measure of damages
- § 68:6 Injunctions
- § 68:7 Prerequisite to injunction
- § 68:8 Injunction bond
- § 68:9 Enforcement
- § 68:10 Attorney fees
- § 68:11 Lis pendens

- § 68:12 Legal effect of lis pendens
- § 68:13 Underlying interpretive maxims
- § 68:14 Specific use restrictions—building lines
- § 68:15 —types of improvements
- § 68:16 Prefabricated/manufactured housing permitted
- § 68:17 Specific restrictions—trustee approvals
- § 68:18 Laches

PART 15 STATUTORY ACTIONS AFFECTING REAL ESTATE

CHAPTER 69 PARTITION

- § 69:1 Recognizing types of joint ownership
- § 69:2 Tenancy in common
- § 69:3 Joint tenancy
- § 69:4 Tenancy by the entireties
- § 69:5 Severance
- § 69:6 Partition
- § 69:7 The partition suit
- § 69:8 Parties to partition suits
- § 69:9 Procedure for partition in kind
- § 69:10 Partition sale
- § 69:11 Attorney fees in partition
- § 69:12 Income and expense
- § 69:13 Distribution of partition proceeds
- § 69:14 Tenancies in common as liquid investments; emerging market

CHAPTER 70 QUIET TITLE

- § 70:1 Quiet title—source of law
- § 70:2 Standing to bring quiet title action
- § 70:3 Quiet title actions—burden of proof
- § 70:4 Remedy in quiet title action

CHAPTER 71 EJECTMENT

- § 71:1 Ejectment—source of law
- § 71:2 Overview of V.A.M.S. chapter 524
- § 71:3 Missouri betterment statute
- § 71:4 Distinguishing ejectment from quiet title
- § 71:5 Core remedy in ejectment action

TABLE OF CONTENTS

PART 16 LIENS

**CHAPTER 72 JUDGMENT, REAL ESTATE
BROKER, AND REAL ESTATE TAX LIENS**

- § 72:1 Defined
- § 72:2 Judgment liens
- § 72:3 Priority of judgment lien
- § 72:4 Duration of judgment lien
- § 72:5 Sale under judgment lien
- § 72:6 Real estate broker liens
- § 72:7 Real estate tax liens
- § 72:8 Redemption from tax sale
- § 72:9 Purchasing at tax sale

CHAPTER 73 MECHANIC’S LIENS

- § 73:1 Background
- § 73:2 Purpose
- § 73:3 Constitutionality of mechanic’s liens
- § 73:4 Coverage
- § 73:5 Original contractors
- § 73:6 Limitations of subcontractor liens
- § 73:7 Subcontractors
- § 73:8 Materialmen
- § 73:9 Laborers
- § 73:10 Certain licensed professionals as lien claimants
- § 73:11 Notice to owner
- § 73:12 Service of notice
- § 73:13 Recordation of notice
- § 73:14 Lien statement
- § 73:15 Rationale for just and true account
- § 73:16 Lien statement detail
- § 73:17 Accrual of indebtedness
- § 73:18 Deadline for suit
- § 73:19 Parties
- § 73:20 Equitable mechanic’s liens—rationale
- § 73:21 —named parties
- § 73:22 —enforcement
- § 73:23 Property subject to lien
- § 73:24 Property subject to lien in case of one general contract
- § 73:25 Municipalities
- § 73:26 Leaseholds—mechanic’s lien issues
- § 73:27 —landlord’s fee liable
- § 73:28 —landlord’s fee not liable

- § 73:29 Cacophony of V.A.M.S. § 429.070
- § 73:30 Tenancies by the entirety
- § 73:31 Significance of priority
- § 73:32 First spade rule; title insurance
- § 73:33 Waiver of priority
- § 73:34 Owner precautions
- § 73:35 Lien waivers; joint check rule
- § 73:36 Execution
- § 73:37 Bankruptcy

PART 17 TORT CLAIMS INVOLVING REAL ESTATE

CHAPTER 74 FRAUD

- § 74:1 The great exception
- § 74:2 The elements of the common law tort of fraud
- § 74:3 Representation
- § 74:4 Omission as representation
- § 74:5 Falsity
- § 74:6 Materiality
- § 74:7 Knowledge of falsity or ignorance of truth
- § 74:8 Speaker's intent that representation be acted on
- § 74:9 The hearer's ignorance of the falsity
- § 74:10 The hearer's reliance on the representation as true
- § 74:11 Reliance and the effect of inspections
- § 74:12 Reliance and title verification
- § 74:13 The hearer's right to rely
- § 74:14 The hearer's consequent and proximately caused injury
- § 74:15 Contract disclaimers as a defense to fraud
- § 74:16 Convergence of major fraud issues
- § 74:17 Miscellaneous defenses to fraud
- § 74:18 Statutory fraud
- § 74:19 Remedies for fraud

CHAPTER 75 PREMISES LIABILITY

- § 75:1 General
- § 75:2 Trigger for premises liability
- § 75:3 Categorization of land entrants
- § 75:4 Invitees
- § 75:5 Licensees
- § 75:6 Trespassers
- § 75:7 Special notice

TABLE OF CONTENTS

CHAPTER 76 LENDER LIABILITY

- § 76:1 Overview of lender liability
- § 76:2 Lender fraud liability
- § 76:3 Lender breach of contract relating to funding
- § 76:4 Lender negligent misrepresentation
- § 76:5 Damages for breach of contract relating to funding
- § 76:6 Lender prima facie tort liability
- § 76:7 Charging lender liability claim with fiduciary status

CHAPTER 77 TRESPASS AND NUISANCE

- § 77:1 Elements of trespass
- § 77:2 Trespass period of limitations
- § 77:3 Remedy
- § 77:4 Nuisance
- § 77:5 Temporary compared to permanent nuisance—damages
- § 77:6 Temporary/permanent nuisance—limitations

Table of Laws and Rules

Table of Cases

Index