

# Table of Contents

## CHAPTER 1. THE DEED OF TRUST

- § 1:1 Introduction
- § 1:2 Content of deed of trust
- § 1:3 Power of sale
- § 1:4 The lien theory
- § 1:5 Limitations

## CHAPTER 2. THE TRUSTEE

- § 2:1 Qualifications
- § 2:2 Authority
- § 2:3 Duties
- § 2:4 Federal Fair Debt Collection Practices Act
- § 2:5 Compensation
- § 2:6 Delegation of power
- § 2:7 Trustee purchasing from herself
- § 2:8 Conflict of interest
- § 2:9 Disbursement of proceeds
- § 2:10 Appointment of successor
- § 2:11 Cotrustees
- § 2:12 Sheriff as trustee
- § 2:13 Law firm as trustee

## CHAPTER 3. PREPARING FOR SALE

- § 3:1 Default
- § 3:2 Pre-foreclosure duties imposed under RESPA
- § 3:3 Tender
- § 3:4 Acceleration
- § 3:5 Second mortgages—Applicability of statutes
- § 3:6 —Statutory requirements
- § 3:7 Records search
- § 3:8 Advertisement—Requirements
- § 3:9 —Contents
- § 3:10 —Newspaper
- § 3:11 —Irregularity
- § 3:12 Notice of sale by certified mail
- § 3:13 Junior federal tax liens—Notice requirements
- § 3:14 Foreclosure of federally related loans
- § 3:15 Common problems associated with ownership of the indebtedness
- § 3:16 Procedure when property is subject to a nonrevenue lien in favor of the United States

## **CHAPTER 4. THE SALE**

- § 4:1     Moratorium on sale—Calamity or disability of mortgagor
- § 4:2     —Death of mortgagor
- § 4:3     —Military service
- § 4:4     —The COVID 19 coronavirus pandemic
- § 4:5     Day of sale
- § 4:6     Time of sale
- § 4:7     Place of sale
- § 4:8     Adjournment of sale
- § 4:9     Lulling
- § 4:10    Chilled bidding
- § 4:11    The sale
- § 4:12    Property used as meth lab
- § 4:13    Loan secured partly by personalty
- § 4:14    Sale in bulk or in parcels
- § 4:15    Marshalling assets
- § 4:16    Sale price
- § 4:17    Lender bidding strategy
- § 4:18    Relief from mistake
- § 4:19    Void or merely voidable sale
- § 4:20    Junior lienholders
- § 4:21    Priority of claims to surplus
- § 4:22    Vendors' and vendees' liens
- § 4:23    Bona fide purchaser
- § 4:24    Potential liability for Missouri taxes
- § 4:25    Purchaser's potential liability for toxic waste cleanup
- § 4:26    Crops and fixtures
- § 4:27    Junior federal tax liens—Right to redeem
- § 4:28    Trustee's deed
- § 4:29    Trustee's accounting
- § 4:30    Foreclosure on a condominium
- § 4:31    Foreclosure on a manufactured home
- § 4:32    Gramm-Leach-Bliley Act privacy considerations
- § 4:33    Title insurance
- § 4:34    Post-foreclosure notice to tenant of residential property
- § 4:35    Special risk imposed by reverse mortgages

## **CHAPTER 5. ANCILLARY AND ALTERNATE REMEDIES OF THE MORTGAGEE**

- § 5:1     Right to possession after default
- § 5:2     Securing possession after foreclosure
- § 5:3     Appointment of a receiver
- § 5:4     Deeds in lieu of foreclosure

## TABLE OF CONTENTS

- § 5:5 Deficiency
- § 5:6 Recovery of attorney's fees
- § 5:7 Insured casualty loss
- § 5:8 Judicial foreclosure

## CHAPTER 6. REMEDIES OF THE MORTGAGOR

- § 6:1 Injunction of sale
- § 6:2 Redemption in equity
- § 6:3 —The effect of laches, waiver and estoppel
- § 6:4 —Parties
- § 6:5 Statutory redemption
- § 6:6 —Who may redeem
- § 6:7 —Notice of intention to redeem
- § 6:8 —Sufficiency of bond
- § 6:9 —Notice, hearing and approval of bond
- § 6:10 —Tolling of period
- § 6:11 —Damages recoverable
- § 6:12 Bankruptcy—Automatic stay
- § 6:13 —Fraudulent transfer
- § 6:14 —Voidable preference
- § 6:15 Wrongful foreclosure
- § 6:16 Prima facie tort
- § 6:17 Standing: ownership and possession of the note
- § 6:18 Workouts and short sales
- § 6:19 Recharacterization of purported sale as equitable mortgage
- § 6:20 Borrower's rescission right under Truth in Lending Act
- § 6:21 Relief from unfair, deceptive, or abusive acts and practices through the Consumer Financial Protection Bureau

## CHAPTER 7. FORMS

- § 7:1 Deed of trust
- § 7:2 —With assignment of leases and rents and security agreement
- § 7:3 Resignation of trustee
- § 7:4 Appointment of successor trustee by mortgagee
- § 7:5 Appointment of successor trustee after commencement of advertisement
- § 7:6 Affidavit for appointment of successor trustee by circuit court
- § 7:7 Order appointing successor trustee
- § 7:8 Affidavit of holder

MISSOURI FORECLOSURE MANUAL—MISSOURI PRACTICE SERIES

- § 7:9 Notice of default—Second mortgage
- § 7:10 Affidavit of second mortgagee
- § 7:11 Affidavit of no military service
- § 7:12 Notice of trustee's sale (long form)
- § 7:13 Notice of trustee's sale (short form)
- § 7:14 Notice of disposition of collateral under UCC Article 9
- § 7:15 Notice of sale to the Internal Revenue Service holding  
a junior federal tax lien
- § 7:16 Request for notice of sale
- § 7:17 Notice of intention to redeem
- § 7:18 Certificate of sale
- § 7:19 Redemption bond
- § 7:20 Motion for approval of redemption bond
- § 7:21 Notice of hearing on motion for approval of bond
- § 7:22 Order approving redemption bond
- § 7:23 Receipt and acknowledgment of redemption
- § 7:24 Order extinguishing liability on bond
- § 7:25 Trustee's affidavit of mailing (presale)
- § 7:26 Trustee's script for trustee's sale of real estate to be  
read prior to sale
- § 7:27 Trustee's accounting
- § 7:28 Trustee's deed under sale
- § 7:29 Trustee's affidavit of mailing (postsale)
- § 7:30 Release of right of redemption by Internal Revenue  
Service
- § 7:31 Estoppel affidavit for deed in lieu of foreclosure
- § 7:32 Petition for judicial foreclosure of mortgage
- § 7:33 Decree of foreclosure of mortgage
- § 7:34 Writ of execution fieri facias
- § 7:35 Petition for judicial foreclosure of a contract for deed
- § 7:36 Decree of foreclosure of a contract for deed
- § 7:37 Petition for judicial foreclosure
- § 7:38 Answer and counterclaim for redemption
- § 7:39 Decree fixing redemption period
- § 7:40 Motion for appointment of a receiver
- § 7:41 Order appointing receiver
- § 7:42 Oath of receiver
- § 7:43 Bond of receiver
- § 7:44 Notice to debtors of defendant
- § 7:45 Petition for judicial foreclosure
- § 7:46 Answer and counterclaim of mechanic's lien claimant
- § 7:47 Judgment of foreclosure and ranking of claims
- § 7:48 Petition for reformation and for judicial foreclosure
- § 7:49 Notice of lis pendens
- § 7:50 Decree of reformation and foreclosure

## TABLE OF CONTENTS

§ 7:51	Notice of sheriff's sale by plaintiff to defendant owner
§ 7:52	Sheriff's notice of sale (for publication)
§ 7:53	Sheriff's report of sale
§ 7:54	Order of confirmation of sale
§ 7:55	Sheriff's deed on sale under execution
§ 7:56	Occupancy termination agreement
§ 7:57	Petition to set aside foreclosure—Breach of duty by trustee—Seeking to enjoin removal from property and to quiet title
§ 7:58	Notice of removal—Action to set aside foreclosure
§ 7:59	Motion—By mortgagee—For extension of time—Unopposed
§ 7:60	— —To dismiss petition to set aside foreclosure
§ 7:61	Memorandum—In support of mortgagee's motion to dismiss petition to set aside foreclosure

## APPENDICES

APPENDIX A.	Customary Times and Places of Sale by County
APPENDIX B.	Trustee's Checklist
APPENDIX C.	Missouri Foreclosure Statutes and Rules
APPENDIX D.	Title Insurance Company Foreclosure Requirement
APPENDIX E.	Fannie Mae/Freddie Mac uniform instruments

### Table of Laws and Rules

### Table of Cases

### Index