

Real Estate Finance: Missouri

by Benjamin L. Musholt, Armstrong Teasdale LLP, with Practical Law Real Estate

Law stated as at 16 Oct 2017 • Missouri, USA

*A Q&A guide to real estate finance law for borrowers and lenders in Missouri. This Q&A addresses state laws relating to security instruments, usury laws, limitations on personal liability, recording requirements and taxes, priority issues, mechanics' liens, landlord liens, title insurance matters, and foreclosure procedures primarily impacting lending transactions in a commercial context. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see *Real Estate Finance: State Q&A Tool*).*

Contents

Instrument and Execution

Priority

Mortgage Recording Taxes

Title Insurance

Foreclosure

Foreign Entities

Instrument and Execution

1. When real estate is part of the lender's collateral, is a mortgage commonly used in your jurisdiction or is a trustee appointed to hold a deed of trust (or a deed to secure debt) as security for the loan? If a deed of trust is more commonly used, who is typically designated as the trustee?

A **deed of trust** is the most common method of securing a lien on real estate in Missouri. Mortgages are rarely used. Deeds of trust commonly include a power of sale provision, which is a faster foreclosure mechanism (see Question 14).

The deed of trust is a three-party instrument with:

- The borrower as grantor.
- The lender as grantee.
- The trustee.

The trustee is typically either:

- An officer of the lender who is a Missouri resident.
- A title company incorporated in Missouri.
- A Missouri corporation.

2. Describe any laws that would limit a borrower's or guarantor's personal liability for debt secured by real property.

There are no Missouri laws that would limit a borrower's or guarantor's personal liability for debt secured by real property.

3. Are there restrictions on interest rates charged for loans secured by real property?

Usury laws typically only apply to consumer loans in Missouri. There are no restrictions or interest rate limits on either:

- Business loans for \$5,000 or more.
- Loans to:
 - corporations;
 - **partnerships**; or
 - **limited liability companies**.

(§ 408.035, RSMo.)

Absent federal preemption, the Missouri Revised Statutes govern limits on first lien mortgage loans in Missouri. It limits the amount of interest to either:

- 10%.
- If the market rate is more than 10%, the parties may agree to use the market rate.

(§ 408.030.1, RSMo.)

The Missouri Division of Finance announces the current market rate on its website. The parties may agree to any interest rate for second mortgages securing at least \$2,500 (§§ 408.232 and 408.234.1, RSMo).

4. Are there any requirements for the execution of a mortgage or deed of trust? In particular, please consider if:

- Witnesses are required.

- Specified officers of a corporation (or members of a limited liability company) must execute the security instrument.
- The signatory's name and title must be specified on the signature page.
- A corporate seal is required.
- Signed resolutions must be presented with the security instrument for purposes of recording.
- There are any other important requirements in your state?

Witnesses

Witnesses are not required for the execution of a deed of trust in Missouri.

Specified Officers

Missouri law does not specify that particular officers must sign a deed of trust, provided that the office signing is duly authorized to do so.

Signatory's Name and Title

The signatory's name and title should be reflected in the signature and notary blocks of the deed of trust to avoid any ambiguity about the person signing.

Corporate Seal

If the corporation has a seal, it should be affixed to the deed of trust. If the corporation has no seal, the notary block should state so. The lack of a seal is not fatal (see *Stevens v. Knights of Modern Maccabees*, 132 S.W. 757, 760 (Mo. Ct. App. 1910)).

Signed Resolutions

Signed resolutions are not required to be attached to a deed of trust or presented when recording.

Other Requirements

There are no other legal requirements for executing a deed of trust in Missouri.

5. Provide the statutory form of acknowledgment for:

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

The Missouri Revised Statutes prescribe forms of acknowledgment for individuals, attorneys-in-fact, and corporations (§ 442.210, RSMo). These forms are commonly used, but are not exclusive. The Missouri Revised Statutes also contain additional forms of acknowledgments (§ 486.330, RSMo).

Individual

STATE OF [STATE])

COUNTY OF [COUNTY])SS.

)

On this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], to me known to be the person described in and who executed the foregoing instrument, and acknowledged that [he/she] executed the same as [his/her] free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.

My Commission Expires: _____

[DATE] Notary Public

Printed Name: [NOTARY NAME]

Corporation

STATE OF [STATE])

COUNTY OF [COUNTY])SS.

)

On this [DATE] day of [MONTH], [YEAR], before me appeared [SIGNATORY NAME], to me personally known, who, being by me duly sworn did say that [he/she] is the [SIGNATORY TITLE] of [CORPORATION NAME], a [STATE] corporation, and that [the seal affixed to the foregoing instrument is the corporate seal of said corporation OR said corporation has no corporate seal], and that said instrument was signed [and sealed] in behalf of said corporation by authority of its board of directors, and said [SIGNATORY NAME] acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.

My Commission Expires: _____

[DATE]

Notary Public

Printed Name: [NOTARY NAME]

Limited Liability Company

STATE OF [STATE]

)

COUNTY OF [COUNTY]

)SS.

)

On this [DATE] day of [MONTH] in the year [YEAR], before me, [NOTARY NAME], a Notary Public in and for said state, personally appeared [MANAGER/MEMBER NAME] of [COMPANY NAME], known to me to be the person who executed the within [TYPE OF DOCUMENT] in behalf of said limited liability company and acknowledged to me that [he/she] executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.

My Commission Expires:

[DATE]

Notary Public

Printed Name: [NOTARY NAME]

Limited Partnership

STATE OF [STATE]

)

COUNTY OF [COUNTY]

)SS.

)

On this [DATE] day of [MONTH] in the year [YEAR] before me, [NOTARY NAME], a Notary Public in and for said state, personally appeared [SIGNATORY NAME] of [PARTNERSHIP NAME], known to me to be the person who executed the within [TYPE OF DOCUMENT] in behalf of said partnership and acknowledged to me that [he/she] executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.

My Commission Expires: _____

[DATE] Notary Public

Printed Name: [NOTARY NAME]

Trustee

STATE OF [STATE])

COUNTY OF [COUNTY])SS.

)

On this [DATE] day of [MONTH], in the year [YEAR], before me [NOTARY NAME], a Notary Public in and for said state, personally appeared [SIGNATORY NAME], [SIGNATORY TITLE] known to me to be the person who executed the within [TYPE OF DOCUMENT] in behalf of [PUBLIC CORPORATION/ AGENCY/POLITICAL SUBDIVISION/ESTATE NAME] and acknowledged to me that [he/she] executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.

My Commission Expires: _____

[DATE]

Notary Public

Printed Name: [NOTARY NAME]

Priority

6. Describe the relevant statutes granting priority to mechanics' liens.

Sections 429.005 to 429.630 of the Missouri Revised Statutes grant lien rights to:

- Laborers.
- Material suppliers.
- Architects.
- Others engaged in residential and commercial projects.

Every contractor, day laborer, or person performing work or labor must file a **mechanics' lien**, including a just and true account of the work, due no later than six months from the last date of the work performed and commence an action of the lien within six months from the filing date of the lien (§§ 429.080 and 429.170, RSMo). Priority of a mechanics' lien relates back to the first date of work performed at the property by any contractor or subcontractor in the current project, not just the first date of work of the lien claimant (§ 429.050, RSMo). Special rules apply to liens for subcontractors and for newly constructed residential property (§§ 429.013 and 429.016, RSMo).

General contractors must provide certain statutory notices regarding their lien rights to property owners or they risk losing their lien rights (§§ 429.012 and 429.013, RSMo). Typically, these statutory notices are given in the original contract with the contractor or in the first invoice for work.

Subcontractors must give at least ten days' notice to the property owner before filing their lien claims (§ 429.100, RSMo). Suits to enforce lien claims must be filed within six months of filing of the lien itself (§ 429.170, RSMo).

7. Are there liens which can supersede the priority of a lender's recorded lien?

In Missouri, there are liens that can supersede the priority of a lender's recorded lien. By statute, property tax, sewer district, and certain other taxing district liens have priority over recorded liens, regardless of recording priority.

Mechanics' liens may attain priority over a recorded deed of trust depending on many facts, including:

- The date work was first performed on the property.
- The date of recording of the deed of trust.
- Whether the deed of trust was for the acquisition of the property or the improvement of the property.

8. How do lenders maintain the priority of their real property liens over superseding liens, such as real property tax liens and mechanics' liens? In particular, please consider:

- Permanent loans.
- Construction loans with future advances.
- Credit facilities with future advances under revolving lines of credit.

Permanent Loans

See Credit Facilities.

Construction Loans

Missouri's future advance statute does offer priority to certain future advances on construction loans (see Credit Facilities). Most construction loan disbursements, however, are administered by title companies or affiliated disbursing agents who collect lien waivers and issue "date down" endorsements on the lender's construction loan title insurance policies.

Credit Facilities

Missouri lenders may advance sums to protect their liens on real estate. These amounts are secured by the deed of trust even if the deed of trust does not purport to secure future advances, or if the amounts would exceed the stated limit on future advances (§ 443.055, RSMo).

Missouri's future advance statute does not offer absolute protection against intervening liens. In particular, statutory liens such as mechanics' liens may attain priority over future advances (§§ 429.005 to 429.630, RSMo). First priority lenders, however, have protections over second priority lenders where the first deed of trust purports to secure future advances, if:

- The borrower has not terminated the future advance provisions of the first priority deed of trust.
- The future advance does not exceed the stated face amount secured by the first priority deed of trust.

(§ 443.055, RSMo.)

9. What are a landlord's legal rights to a tenant's personal property located in the leased premises? Are these rights governed by statute, common law, or contract?

Missouri does not have a general statute granting a landlord a lien on its tenant's personal property. However, Missouri does have a landlord's lien on crops (§§ 441.280 to 441.300, RSMo).

To obtain a landlord's lien on the tenant's personal property, either:

- The **tenant** must grant a security interest to the landlord.
- The **landlord** must obtain a judgment (or other court order) establishing the landlord's interest.

Although Missouri does not have a landlord lien statute (except on crops), many lenders still ask for a landlord lien waiver where the tenant's personal property is a significant part of the lender's collateral.

Mortgage Recording Taxes

10. Is there a mortgage recording tax (or similar tax)? If so:

- What is the rate and how is the tax calculated?
- Can a loan or refinance be structured to reduce the tax?
- Is the tax payable on making a loan secured by real property or perfecting a lien on real property?
- Is there any type of real property or transaction that is exempt from a mortgage recording tax (or similar tax)?
- Are there any other state or local taxes or fees imposed on the grant, perfection, or enforcement of a security interest in real property? Are there any exceptions?

There is no mortgage recording tax in Missouri.

Nominal recording and filing charges apply and vary from county to county.

Title Insurance

11. Are title insurance premiums or service charges for lenders' title insurance policies regulated? Are the costs of title insurance negotiable within a specified range of rates? Are there any discounts available for reissued policies?

Title insurance charges in Missouri are based on rates the insurers file with the state. There is little or no negotiation to the title insurance rates filed. Some discounts may be offered by title companies if there is a recent policy the company, or its underwriter, has written on the property.

12. Provide a list and brief description of the title insurance endorsements available to lenders.

Each underwriter has a list of endorsements it offers. The most common endorsements in Missouri are:

- **American Land Title Association (ALTA) 2** (Truth in Lending).
- ALTA 3 (Zoning (Unimproved Land/Completed Structure)).
- ALTA 6 (Variable Rate).
- ALTA 8 (Environmental Protection Lien).

- ALTA 9 (Restrictions, Encroachments, Minerals (Owner's, Lender's, Unimproved Land, Improved Land)).
- ALTA 11 (Mortgage Modification).
- ALTA 12 (Aggregation).
- ALTA 13 (Leasehold).
- ALTA 14 (Future Advance).
- ALTA 17 (Access).
- ALTA 18 (Tax Parcel).
- ALTA 19 (Contiguity).
- ALTA 25 (Survey).
- ALTA 26 (Subdivision).

Forms of these endorsements are available on the ALTA's website (subscription required).

13. How is gap coverage (the time between closing the loan and actually recording the lien) typically handled by the title insurance companies?

In Missouri, the title company typically assumes the gap coverage risk and requires the borrower to provide it with an affidavit and indemnity against intervening liens.

Foreclosure

14. Describe the foreclosure process available and the typical timing for the process. Do borrowers have a right of redemption? If so, what is the redemption period? Can lenders limit a borrower's right of redemption?

Deeds of trust are typically foreclosed in Missouri by the trustee (or a successor trustee) in a non-judicial trustee's sale, after meeting all of the statutory notice and publication requirements, including:

- At least 20 days' notice of the date of the sale must be given by registered or certified mail to the borrower and other parties in interest of:
 - the sale date, location, and time;
 - the terms of the sale; and
 - a description of the property to be sold.
- The trustee must publish a notice of foreclosure sale at least at least 20 times prior to and continuing to the day of sale (as a practical matter, most notices are published 21 times), if the property is located in a county with a city of 50,000 inhabitants or more. In other geographical areas, publication must occur in at least four successive weeks, with the last advertisement no more than a week from the date of the sale.

(§§ 443.310 and 443.320, RSMo.)

The foreclosure process takes approximately 60 to 90 days.

The grantor of the deed of trust may redeem but only if notice of intent to redeem is delivered within ten days before the advertised sale date (§§ 443.410 to 443.440, RSMo). Additionally, the grantor or owner may claim an equitable right to redeem from the sale by filing a lawsuit asserting grounds for equitable relief.

15. Describe any significant costs of or impediments to foreclosing a lien on real property.

There are no significant costs or impediments to foreclosing a lien on real estate in Missouri, aside from the cost of publishing the notice of sale.

Foreign Entities

16. Are there any permissions, approvals, or licenses specifically required for foreign banks (or other foreign lenders) to make loans secured by real property?

There are no permissions, approvals, or licenses specifically required for foreign banks to make loans secured by real property, if there is no other established business presence in Missouri (§ 351.572, RSMo).