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LENDING DOCUMENTATION

In analyzing a large multi-state title company's secured lending, we prepared the following outline of federal and Missouri laws in the area:

FEDERAL

12 U.S.C. 1464 Home Owners Loan Act (HOLA)
12 CFR Section 560 (State laws pre-empted and not pre-empted by federal law.)
12 CFR Section 591 (Federal permanent preemption of state prohibitions on due-on-sale clauses)

MISSOURI REVISED STATUTES

Chapter 407 Merchandising Practices Act
Chapter 427 Creditor Protection (Lender's non-liability for environmental violations)
Chapter 443 Deeds of Trust, Mortgages, ..

Miscellaneous Sections:

408.230 et seq: Second Mortgage loans
408.030 Interest, maximum rate allowed
408.035 Unlimited interest, when allowed
408.036 Prepayment penalty by lender prohibited, exception
408.052 Points prohibited, exception
408.100 Interest on small loans (section cited in Bankers System form of Second Deed of Trust Note and Disclosure
408.551 Legal tender and interest; defaults - applicability of Section 504.554 to second mortgage loans
408.551 Notice of Default on second mortgage loans
429.050 Priority of mechanics liens (for construction funded by deed of trust)
442.210 Certificate of acknowledgment - contents
443.055 Future Advances deeds of trust

SIGNIFICANT PROVISIONS OF STATUTES

FEDERAL

Loan Application should include "Government Monitoring" section (see format below)

MISSOURI

Points - Points and Origination fees - Missouri has no restrictions on points or origination fees on federal government backed mortgages or intended to be federally insured. Section 408.052

Otherwise:

- lender can charge a maximum of one percent origination fee
- if loan is for construction, repair or improvement of residential real estate, lender can charge up to 1% of loan amount for inspection and disbursement of the proceeds of the loan to a third party.

Charges/fees allowed: (Missouri says no charges can be assessed other than):

1. recording costs
2. taxes
3. closing costs to third parties: - title exam; title insurance, survey; preparation deed, settlement statement, notary, appraisal fees, credit reports, insurance, origination fee up to 5%, amounts paid by lender to other to reduce the rate on a second mortgage, and an annual fee up to \$50 on revolving loans.
4. insurance protecting the lender against borrower's default or other credit loss, and casualty insurance if not already covered, and life, accident health or involuntary unemployment coverage.
5. Late charge for payment over 15 days, (the lesser of 5% of amount due or \$25.00.
6. On refused instruments, the actual charge of handling plus \$15.00
7. Attorneys fees if the contract calls for it, and (only) if suit is brought

Trustee for Missouri deed of trust --can not be a foreign corporation or person in any security agreement executed after 8/28/94. Sec. 443.350

Foreclosure sales: Missouri: requires not less than 20 days' notice of sale, whether so provided in deed of trust or not. Section 443.310

Form of Notice of sale per Section 443.320

Time of sale: Unless the deed of trust specifies an hour, the time is commercially reasonable if between 9:00 a.m. and 5:00 p.m.; If not time specified, then shall be held at the time customary for such sales in the county. Section 443.327.

Form of Acknowledgment on Deeds- Must be in the following form:

Notice of Default on second mortgage loans - contents are strictly prescribed (408.554)

1. After borrower has been in default over 10 days, lender “may” give notice
2. Notice shall conspicuously state: name and phone number of lender, brief identification of credit transaction, borrower’s right to cure the default’ amount of payment and date by which payment must be made to cure the default.
4. Notice “shall” state:
“If you voluntarily surrender possession of the following specified collateral, you could still owe additional money after the money received from the sale of the collateral is deducted from the total amount you owe.”
5. In the case of a third default on the same second mortgage loan, the notice shall indicate that in the case of further default, the borrower will have no right to cure.

A CHECKLIST FOR PROVISIONS IN LOAN DOCUMENTS

NOT FNMA/FHLMC/VA LOANS

Deed of Trust With Future Advances clause - Missouri, Not for FNMA, FHLMC, FHA)

- ___ Date, identity of parties,
- ___ Conveyance - language of grant: grants, bargains, sells and conveys
- ___ address and legal description
- ___ principal amount of loan, note dated, general terms
- ___ Identify debt secured - “including renewals, extensions and modifications,”

- ___ borrower to pay debt etc. as evidenced by Note
- ___ warranty of title
- ___ prior security interests to be paid, with copies of notices to lender; no modification
- ___ charges, liens against property to be paid by borrower
- ___ due on sale clause; unless prohibited by federal law; 30 days notice of acceleration
- ___ occupancy, preservation, maintenance of property,
- ___ Inspection by lender at reasonable times, on notice, specifying cause
- ___ protection of lender's rights in property if borrower fails to perform covenants; any
- ___ amounts paid by lender for those purposes to become additional debt.
- ___ assignment of leases
- ___ default: failure to pay on time; general insecurity clause
- ___ remedies on default: Acceleration; foreclosure sale;
- ___ Expenses on default
- ___ hazardous substances prohibited; borrower to give lender notice of investigations
- ___ condemnation proceeds assigned to lender
- ___ hazard insurance by borrower, else lender can provide at borrower's cost; lender has
- ___ right to hold policies; insurance proceeds applied to restoration or repair of property; if
- ___ not economically feasible, then applied to sums due under Note.
- ___ escrow for taxes and insurance; no escrow charges
- ___ financial reports and additional documents as requested
- ___ successors and assigns bound; joint and several liability
- ___ governing law, severability
- ___ successor trustee authorized
- ___ trustee leases property to grantor
- ___ notices, method
- ___ payments applied first to prepayment charges due under the Note, then to taxes and
- ___ insurance, then interest, then principal, and then late charges.
- ___ mortgage insurance - if required by lender, borrower to pay premiums
- ___ lender's extension or modification of borrower's obligations not a waiver
- ___ loan charges in excess of legal limits to be reduced as necessary and refunded
- ___ release upon payment of all sums secured, without charge to borrower except recording
- ___ fees.
- ___ riders to security instrument, identified, incorporated.
 - ___ adjustable rate rider
 - ___ second home rider
 - ___ balloon rider
 - ___ other
 - ___ condominium rider
 - ___ 1-4 family rider
 - ___ planned unit development
- ___ Acknowledgment:

Second Mortgage - Home Equity Loans/Line of Credit documents

Application

Line of credit Agreement, Note, and Truth in Lending disclosures

Note

- ___ promise to pay
- ___ lender can transfer the note
- ___ Interest rate both before and after any default
- ___ payments due when; applied to interest first; payable at ..
- ___ payment amount
- ___ prepayment privilege without penalty
- ___ Missouri says prepayment penalty fee only within the first 5 years; maximum 2% of balance
- ___ loan charges in excess of legal limits to be reduced as necessary and refunded
- ___ late charges for failure to pay on time - 15 days - 5% - only once on each payment
- ___ default in event of ..
- ___ notice of default of overdue amount to be paid by a certain date or entire balance
- ___ accelerated at least 30 days from notice
- ___ waiver of one default does not waive later defaults
- ___ costs and expenses can be added if note accelerated, including e.g. attorneys fees
- ___ methods of giving notice; mail etc
- ___ obligations joint and several; obligations of guarantors, assignees
- ___ borrower waiver of right of presentment and notice of dishonor, defined.
- ___ note is connected with a deed of trust or security instrument that has additional terms, such as due on sale clause and acceleration
- ___ (30 days notice of invoking due on sale clause)

Notice of right to cancel

Disclosure/Information Sheet (home equity line of credit)

Second Deed of Trust (Home Equity, with future advance clause) (Not for FNMA, FHLMC, FHA)

- ___ Date, identity of parties,
- ___ Conveyance - language of grant: grants, bargains, sells, and conveys
- ___ address and legal description
- ___ principal amount of loan, note dated, general terms
- ___ Identify debt secured - "including renewals, extensions and modifications,"
- ___ payments to be made as evidenced by Note
- ___ prior security interests to be paid, with copies of notices to lender; no modification
- ___ charges, liens against property to be paid by borrower
- ___ occupancy, preservation, maintenance of property, inspection by lender
- ___ protection of lender's rights in property if borrower fails to perform covenants; any amounts paid by lender for those purposes to become additional debt.

- condemnation proceeds assigned to lender
- hazard insurance by borrower, else lender can provide at borrower's cost; lender has right to hold policies; proceeds applied to restoration or repair of property;
- financial reports and additional documents as requested
- warranty of title
- due on sale clause; unless prohibited by federal law; 12 CFR 591
- default: failure to pay on time; general insecurity clause; any action that adversely affects the property or lenders rights in the property..
- remedies on default: Acceleration; foreclosure sale; expenses added
- hazardous substances prohibited; borrower to give lender notice of investigations
- escrow for taxes and insurance; no escrow charges
- successors and assigns bound; joint and several liability
- severability
- successor trustee authorized
- trustee leases property to grantor
- notices, method
- governing law
- line of credit; security to remain in place until released even if balance is zero
- payments applied first to prepayment charges due under the Note, then to taxes ..
- mortgage insurance - if required by lender, borrower to pay premiums
- assignment of leases
- lender's extension or modification of borrower's obligations not a waiver
- loan charges in excess of legal limits to be reduced as necessary and refunded
- release upon payment of sums secured; no charge to borrower except recording
- riders to security instrument, identified, incorporated.
- adjustable rate rider condominium rider second home rider
- 1-4 family rider balloon rider planned unit development
- Acknowledgment:

Second Deed of Trust - Closed End Loans - documents

Application

Note (see above)

Notice of right to cancel

Disclosure/Information Sheet (home equity line of credit)

Second Deed of Trust

- date, identity of parties, principal amount of loan, note dated, general terms
- secures the debt, renewals, extensions and modifications, payment of all other sums, with interest, advanced under Deed of Trust to protect the collateral, performance of

- borrowers covenants.
- language of grant: mortgage, grant and convey
- address and legal description
- borrower warranty of title
- borrower to pay debt etc. as evidenced by Note
- to pay funds for taxes and insurance as escrow items; no escrow charges
- payments applied first to prepayment charges due under the Note, then to taxes and insurance, then interest, then principal, and then late charges.
- charges, liens against property to be paid by borrower
- hazard insurance by borrower, else lender can provide at borrower's cost; lender has right to hold policies; insurance proceeds applied to restoration or repair of property; if not economically feasible, then applied to sums due under Note.
- maintenance and repair
- assignment of rents;
- taxes, assessments and liens - any amounts paid by lender for those purposes to become additional debt.
- mortgage insurance - if required by lender, borrower to pay premiums
- inspection by lender at reasonable times, on notice, specifying cause
- condemnation proceeds assigned to lender
- lender's extension or modification of borrower's obligations not a waiver
- successors and assigns bound; joint and several liability
- loan charges in excess of legal limits to be reduced as necessary and refunded
- notices, method
- governing law, severability
- borrower's copy to be provided
- due on sale clause; unless prohibited by federal law; 30 days notice of acceleration
- borrower's right to reinstate: earlier of 5 days before sale or entry of judgment
- enforcing security instrument; by payment of sums due, cure any default of other covenants, pays all expenses incurred in enforcing ..
- sale of note authorized without notice; if a change of Loan Servicer, notice to borrower
- hazardous substances prohibited; borrower to give lender notice of investigations
- default: failure to pay on time, breach of covenants, bankruptcy; default on any other deed of trust or mortgage on same property
- Acceleration; remedies -
- sale
- release upon payment of all sums secured, without charge to borrower except recording fees.
- successor trustee authorized
- riders to security instrument, identified, incorporated.
 - adjustable rate rider
 - second home rider
 - balloon rider
 - other
 - condominium rider
 - 1-4 family rider
 - planned unit development
- Acknowledgment:

FNMA/FHLMC/VA LOANS

Loan Applications (FNMA/FHLMC/VA)

To include Government Monitoring section to be completed:

“The following information is requested by the Federal Government for certain types of loans, in order to monitor the lender’s compliance with equal credit opportunity, fair housing laws, and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. if you choose not to furnish it, ... the lender is required to note race and sex on the basis of visual observation or surname...

Borrower ____ I do not wish to furnish this information Co-Borrower: __ I do not ...
Race/National Origin
__ American Indian
etc
Sex: ____

First deed of trust/mortgage documents

First Mortgage Note - (FNMA/FHLMC)

- ___ promise to pay
- ___ lender can transfer the note
- ___ Interest rate both before and after any default
- ___ payments due when; applied to interest first; payable at ..
- ___ payment amount
- ___ prepayment privilege without penalty
- ___ Missouri says prepayment penalty can be charged only in first 5 years
- ___ loan charges in excess of legal limits to be reduced as necessary and refunded
- ___ late charges for failure to pay on time - 15 days - 5% - only once on each payment
- ___ notice of default of overdue amount to be paid by a certain date or entire balance
- ___ accelerated at least 30 days from notice
- ___ waiver of one default does not waive later defaults
- ___ costs and expenses can be added if note accelerated, including e.g. attorneys fees
- ___ methods of giving notice; mail etc
- ___ obligations joint and several; obligations of guarantors, assignees
- ___ borrower waiver of right of presentment and notice of dishonor, defined.
- ___ note is connected with a deed of trust or security instrument that has additional terms, such as
- ___ due on sale clause and acceleration
- ___ 30 days notice of invoking due on sale clause

First Deed of Trust (FNMA/FHLMC)

- ___ date, identity of parties, principal amount of loan, note dated, general terms
- ___ secures the debt, renewals, extensions and modifications, payment of all other sums, with interest, advanced under Deed of Trust to protect the collateral, performance of

borrowers covenants.
 ___ Conveyance: language of grant: mortgage, grand and convey
 ___ address and legal description
 ___ borrower warranty of title
 ___ borrower to pay debt etc. as evidenced by Note
 ___ to pay funds for taxes and insurance as escrow items; no escrow charges
 ___ payments applied first to prepayment charges due under the Note, then to taxes ...
 ___ charges, liens against property to be paid by borrower
 ___ hazard insurance by borrower, else lender can provide at borrower's cost; lender has
 ___ right to hold policies; insurance proceeds applied to restoration or repair
 ___ occupancy, preservation, maintenance as borrower's principal residence one year
 ___ protection of lender's rights in property if borrower fails to perform covenants; any
 ___ amounts paid by lender for those purposes to become additional debt.
 ___ mortgage insurance - if required by lender, borrower to pay premiums
 ___ inspection by lender at reasonable times, on notice, specifying cause
 ___ condemnation proceeds assigned to lender
 ___ lender's extension or modification of borrower's obligations not a waiver
 ___ successors and assigns bound; joint and several liability
 ___ loan charges in excess of legal limits to be reduced as necessary and refunded
 ___ notices, method
 ___ governing law, severability
 ___ borrower's copy to be provided
 ___ due on sale clause; unless prohibited by federal law; 30 days notice of acceleration
 ___ borrower's right to reinstate: earlier of 5 days before sale or entry of judgment
 ___ enforcing security instrument; by payment of sums due, cure any default of other
 ___ covenants, pays all expenses incurred in enforcing ..
 ___ sale of note authorized without notice; if change of Loan Servicer, notice
 ___ hazardous substances prohibited; borrower to give lender notice of investigations
 ___ Acceleration; remedies - notice to borrower prior to acceleration, to specify the default,
 ___ the action required to cure; a date, at least 30 days from notice by which default must
 ___ be cured, that failure to cure may result in acceleration, foreclosure and sale of
 ___ property. Notice also to inform of right to reinstate and right to assert in foreclosure
 ___ proceeding the non-existence of a default or any other defense
 ___ release upon payment of all sums secured; no charge except recording fees.
 ___ successor trustee authorized
 ___ riders to security instrument, identified, incorporated.
 ___ ___ adjustable rate rider ___ condominium rider ___ second home rider
 ___ ___ 1-4 family rider ___ balloon rider ___ planned unit development
 ___ Acknowledgment:

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