

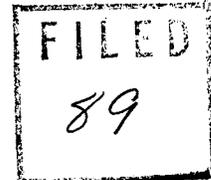
AGRICULTURAL LAND:  
ALIENS

A Missouri citizen may use a loan acquired from a non resident alien to buy Missouri farm land when the loan is secured by a deed of trust. In the event of foreclosure, however, the trustee may not convey title to the alien lender, his agent, trustee, or other fiduciary.

August 1, 1984

OPINION NO. 89-84

The Honorable Patrick Hickey  
Representative, District 83  
Room 301, Capitol Building  
Jefferson City, MO 65101



Dear Representative Hickey:

This opinion is in response to your question asking:

May Missouri citizens use a loan acquired from a non-resident alien to buy Missouri farm land when the loan is secured by a deed of trust on such Missouri farm land and when the statutes prohibit a non-resident alien from owning such farm land?

Your questions relate to sections 442.560, 442.566(1) and (2) and 442.571, RSMo 1978.<sup>1</sup> These sections provide:

**442.560.**--Except as provided in sections 442.560 to 442.591, persons not citizens of the United States and not residents of the United States or of some territory, trusteeship, or protectorate of the United States, and corporations not created by or under the laws of the United States or of some state, territory, trusteeship, or protectorate of the United States shall be capable of acquiring, by grant,

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<sup>1</sup>All statutory references are to RSMo 1978, unless otherwise indicated.

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purchase, devise or descent, real estate except agricultural land as defined in section 442.566, or any interest therein, in this state, and of owning, holding, devising, or alienating the same, and shall incur the like duties and liabilities in relation thereto as if they were citizens of the United States and residents of this state.

**442.566.**--As used in sections 442.560 to 442.591, unless the context clearly requires otherwise, the following terms mean:

(1) **"Agricultural land"**, any tract of land in this state consisting of more than five acres, whether inside or outside the corporate limits of any municipality, which is capable, without substantial modification to the character of the land, of supporting an agricultural enterprise, including but not limited to land used for the production of agricultural crops or fruit or other horticultural products, or for the raising or feeding of animals for the production of livestock or livestock products, poultry or poultry products, or milk or dairy products. Adjacent parcels of land under the same ownership shall be deemed to be a single tract;

(2) **"Alien"**, any person who is not a citizen of the United States and who is not a resident of the United States or of some state, territory, trusteeship, or protectorate of the United States;

**442.571.**--1. Except as provided in sections 442.586 and 442.591, no alien or foreign business shall acquire by grant, purchase, devise, descent or otherwise agricultural land in this state. No person may hold agricultural land as an agent, trustee, or other fiduciary for an alien or foreign business.

2. Any alien or foreign business who acquires agricultural land in violation of sections 442.560 to 442.591 remains in violation of sections 442.560 to 442.591 for as long as he holds an interest in the land.

We construe the term "farm land" in your request to mean "agricultural land" as defined above.

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With respect to the nature of a deed of trust we find the following:

Notwithstanding a few attributes that still inhere in it as a result of its common-law origin, a mortgage, or deed of trust in the nature of a mortgage, given on land to secure the payment of a debt, is now regarded in this state as being, in its last analysis, a lien and nothing more. [Citations omitted.] So viewed, it is neither an estate in land, nor a right to any beneficial interest therein. It is neither jus in re nor jus ad rem. It is merely the right to have the debt, if not otherwise paid, satisfied out of the land. The debt is the essence of the mortgage, the lien a mere incident that follows it as a shadow. . . (Emphasis added.)

Missouri Real Estate & Loan Co. v. Gibson, 282 Mo. 75, 220 S.W. 675, 676 (1920). See also, Fincher v. Miles Homes of Missouri, Inc., 549 S.W.2d 848, 851-852 (Mo. banc 1977).

Given the preceding, it is our opinion that neither Section 442.560 nor Section 442.571 is violated should a Missouri citizen purchase Missouri farm land with a loan acquired from a non-resident alien, even if the loan is secured by a deed of trust on such farm land.

However, because of Sections 442.560 and 442.571, the alien lender may not acquire an interest in the farm land, in the event of foreclosure, by trustee's deed or otherwise. He may not buy the land upon foreclosure directly or through an agent, trustee or other fiduciary.

#### Conclusion

It is the opinion of this office that a Missouri citizen may use a loan acquired from a non resident alien to buy Missouri farm land when the loan is secured by a deed of trust. In the event of foreclosure, however, the trustee may not convey title to the alien lender, his agent, trustee or other fiduciary.

Very truly yours,



JOHN ASHCROFT  
Attorney General