

GEORGE MASON LAW SCHOOL

REAL ESTATE FINANCE

Professors Andrea J. Boyack and Jeffrey L. Heninger

Fall 2009; Tuesdays 8:00 to 9:50 PM

Course Overview

This course will explore the basic elements of construction, development, and permanent financing that are secured by commercial real estate. This course will examine the commercial real estate finance transaction from a practitioner's viewpoint and will cover the laws governing and all the normal documentation used in a real estate finance transaction. We will examine negotiation skills, title insurance, remedies, lender liability risks, borrower legal protections and other facets of a loan secured by commercial real estate from the point of view of both borrower and lender. We will also discuss various options in mortgage loan default, including foreclosure, workouts, refinancing and bankruptcy.

Administrative Issues

The course casebook will be Steven W. Bender, Celeste M. Hammond, Michael T. Madison, and Robert M. Zinman, *Modern Real Estate Finance and Land Transfer: A Transactional Approach*, 4th ed. (2008) ("Casebook"). Your purchase of the Casebook entitles you to use of the authors' documents manual located at <http://www.law.uoregon.edu/faculty/sbender/docmanual.pdf> (use password *docmanual* if necessary). We have also assembled some additional, supplemental readings for you, including articles and sample documents ("Supplement") which will be available the first week of class. The supplemental articles are for your additional reading (as noted on the syllabus) and we will be using the document samples both in and out of class for practical application of concepts discussed. Please (a) review all assigned sample documents with an eye to drafting considerations prior to class and (b) bring to class your copy (electronic or hard copy) of whatever documents we will be discussing that day.

Both Professor Boyack and Professor Heninger will be available by email (aboyack@gmail.com; jeff.heninger@gmail.com) and by phone (703-582-6671 and 571-331-6543). In addition, we are also happy to meet with you before or after class upon request. We will be obtaining email contact information for each student in class, and, periodically we may distribute class information via email.

If a class is canceled due to inclement weather, we will make up the class time by adding twenty-five minutes to the end of the following four class periods (i.e., for four weeks, class will end at 10:15 instead of 9:50). As per instructions from the law school, we will note attendance in every class. If you are unable to attend any class period, please let us know via email. Per ABA accreditation standards, if you miss more than two class periods, you will receive no credit for this course.

Exam and Grading

The final exam for this course is scheduled for **December 14th at 6:00 pm**. The exam will consist primarily of essay questions along with some short answer, true/false and/or multiple choice questions. The exam may be completed in a blue book or on a laptop computer.

The exam will make up 80% of the course grade. 20% of the course grade will be based on completion of in-class and out-of-class coursework, including a title commitment mark-up and a negotiation and drafting exercise. The in-class negotiation will be held on **November 10th**, and all students are expected to attend that day. Out-of-class assignments are due as noted on the syllabus. This is a practitioner course and pre-supposes active participation in classroom discussions and workshops. Please be aware that your grade may be adjusted (e.g., B+ to A- or B+ to B) based on lack of participation or consistently exceptional participation in class.

Readings and Syllabus

LESSON ONE: August 25	Introduction to the Course; History and Overview of Real Estate Finance
READING ASSIGNMENT	CASEBOOK: <u>Chapter 1</u> , all (p.1 – 11; also skim boxed information p. 12-13) <u>Chapter 3</u> , Master Hypothetical and Section A (p. 93 – 99)
LESSON TWO: September 1	Planning the Transaction
READING ASSIGNMENT	CASEBOOK: <u>Chapter 14</u> , all (p. 721 – 740) <u>Chapter 2</u> , Subsection A2 (p. 27 – 35) Supplement A: Sample closing checklist
LESSON THREE: September 8	Loan Applications and Commitments
READING ASSIGNMENT	CASEBOOK: <u>Chapter 4</u> , Sections A and B (p. 131 – 148) <u>Chapter 4</u> , Subsections D1 through D7 (p. 172 – 197, <u>skipping</u> the selections by Ellwood and Garfinkel, the <i>Whalen</i> case and all “Notes & Questions”) <u>Chapter 4</u> , Section C (p. 148 – 170, <u>skipping</u> the <i>Woodbridge Place</i> case and all “Notes and Questions”) Supplement B: “Enforceability of Mortgage Loan Commitments” (the whole article is useful, but you are required to read only Sections IV and V) Supplement B1: Samples of Loan Commitments
LESSON FOUR: September 15	Due Diligence: Title and Survey
READING ASSIGNMENT	CASEBOOK: <u>Chapter 2</u> , Section B (p. 74 – 86) <u>Chapter 4</u> , Subsections D8 and D9 (p. 203 – 209) Supplement C: Articles on role of Title Insurance Supplement C1: Sample Title Insurance Policies (ALTA 1992, 2006; Owner’s, Lender’s) Supplement C2: ALTA 2006 highlights Supplement C3: Selected Endorsements (for your reference - skim) Supplement C4: Sample survey (for in-class reference) <i>AFTER CLASS – Homework (part of your grade is based on this):</i> Title Mark-up Exercise (Due before 5pm Friday, September 18th)

LESSON FIVE: September 22	Notes
READING ASSIGNMENT	CASEBOOK: <u>Chapter 5</u> , Subsections A1 through A4 (p. 229 – 271, <u>skipping</u> Notes 1-5 on p. 236 – 241) Supplement D: Samples of Promissory Notes
LESSON SIX: September 29	Credit Enhancements and Guaranties
READING ASSIGNMENT	Supplement E: “Interpreting the Guaranty” article Supplement E1: <i>Glendale v. Marina View Heights</i> case Supplement E2: <i>Colonial American v. Kosnoski</i> case Supplement E3: Sample Guaranty Agreements (payment and completion) Supplement E4: VA Code §§49-25 and 49-26
LESSON SEVEN: October 6	Mortgages and Mortgage Substitutes
READING ASSIGNMENT	CASEBOOK: <u>Chapter 3</u> , Sections B through D (p. 101 – 122) <u>Chapter 5</u> , Subsections A5 through A8 (p. 271 – 288, <u>skipping</u> "Notes and Questions") Supplement F: Sample Deed of Trust
No class on October 13 (Constructive Friday)	
LESSON EIGHT: October 20	Loan Agreements; Special Issues in Construction Financing Documenting the Real Estate Secured Loan (part 1)
READING ASSIGNMENT	CASEBOOK: <u>Chapter 6</u> , Section A (p. 295 – 298), and Subsections B1 through B3a (p. 300 – 313), and Subsection B5 (p. 336 – 343) <u>Chapter 4</u> , Subsection E2 (p. 218 – 222 to "Notes and Questions") Supplement G: Sample Loan Agreement Supplement G1: “Third-Party Legal Opinion Report” article Supplement G2: Sample Opinion Letter
LESSON NINE: October 27	Documenting the Loan (part 2)
READING ASSIGNMENT	CASEBOOK: <u>Chapter 8</u> , Section B4 (p. 412 – 418) <u>Chapter 3</u> , Section E (p. 122 – 129) Supplement H: <i>K.M.C. v. Irving Trust</i> case Supplement H1: Sample Assignment of Leases Supplement H2: Sample Assignment of Plans Supplement H3: Sample Tenant Estoppel Supplement H4: Sample SNDA Supplement H5: Additional articles about reviewing leases and negotiating SNDAs

LESSON TEN: November 3	Foreclosures and Enforcement of Remedies Introduction to Negotiation Techniques
READING ASSIGNMENT	CASEBOOK: <u>Chapter 8</u> , Subsections B1 – B2 (p. 401 – 411) and Subsections C1 – C3 (p. 418 – 434) <u>Chapter 18</u> , Section C (p. 893 – 904 to #3)
LESSON ELEVEN: November 10	Review and Role Playing: Lender vs. Borrower; the Art of Negotiation* <i>*Part of your grade is based on participating in the in-class negotiation</i>
READING ASSIGNMENT	No reading assigned <i>AFTER CLASS – Homework (part of your grade is based on this):</i> Complete Negotiation and Drafting Exercise (Due before 5pm Friday, November 13th)
LESSON TWELVE: November 17	Review Negotiation and Drafting Exercise Hazardous Substances Indemnity and Environmental Issues (Guest Speaker)
READING ASSIGNMENT	CASEBOOK: <u>Ch. 19</u> <i>The Mortgagee’s Liability for Environmental Hazards</i> (p. 931 – 950) Supplement I: Sample Environmental Indemnity Agreement
LESSON THIRTEEN: November 24	Lender Liability and Borrower Protections
READING ASSIGNMENT	CASEBOOK: <u>Chapter 9</u> , all (p. 477 – 505; skipping all “Notes and Questions”) <u>Chapter 8</u> , Subsection C3 (p. 430 – 452; <u>skipping</u> section by Washburn and all “Notes and Questions”)
LESSON FOURTEEN: December 1	Defaults, Workouts and Refinancing Commercial Real Estate Finance Review
READING ASSIGNMENT	CASEBOOK: <u>Chapter 8</u> , Section A (p. 389 – 397) <u>Chapter 7</u> , Sections A and B (p. 345 – 362) Supplement J: Sample Workout Agreement Supplement J1: Sample Deed in Lieu

Final Exam: December 14th at 6pm.

GOOD LUCK!