

GEORGE MASON LAW SCHOOL
COMMERCIAL REAL ESTATE TRANSFER, LEASING AND FINANCE

Professor Jeffrey L. Heninger

Spring 2023; Mondays and Wednesdays 6:15 to 7:40 PM

Course Overview

Learning the skills relevant to being successful in a transactions practice is the main purpose of this course. We will learn and apply these skills in the context of the transactions surrounding the construction, development, and financing of commercial real estate, as well as the disposition of interests in commercial real estate through transfer and leasing. This course will examine these commercial real estate transactions from a practitioner's viewpoint and will cover the laws governing, due diligence, and all the normal documentation used in a commercial real estate transfer and finance transaction. We will examine sale and leasing, 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. **But the theme through the course will be developing the analytical, negotiating and drafting skills to be successful on your first day in any transactions practice.**

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*, 6th ed. (2018) (“Casebook”). I have also assembled some additional, supplemental readings for you, including articles and sample documents (“Supplement”) which will be available on TWEN prior to use in 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.

The pre-requisite for this course is Property (Law 104).

I will be available by email (jeff.heninger@gmail.com). In addition, I am happy to meet with you outside of class upon request. We will utilize TWEN for communication during the semester.

If a class is canceled due to inclement weather, we will make up the class time on Saturdays, subject to classroom availability, or as otherwise instructed by the School. As per instructions from the law school, I will note attendance in every class. If you are unable to attend any class period, please let me know via email. Per ABA accreditation standards, if you miss more than six class periods, you will receive no credit for this course.

Exam and Grading

The final exam for this course 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 secure laptop computer. The final exam will be closed book, closed note.

The final 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 **tentatively** held on **April 11th and 13th**, and all students are expected to attend those days (**we will discuss dates & times further in class**). Out-of-class assignments are due as noted on the syllabus. This is a practitioners’ 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.

Student Learning Outcomes

By the end of this course,

- Students will be able to demonstrate knowledge of the typical transactions, documentation and due diligence associated with commercial real estate finance and land transfer.
- Students will be able to define and identify the interrelationships between borrower, lender, trustee, guarantor, and title company in a typical commercial finance transaction, and between the buyer, seller, lessor, lessee, and broker in a typical sale or lease transaction.
- Students will be able to analyze title insurance issues, and will have experience in reviewing and negotiating a title insurance commitment.
- Students will be able to prepare and negotiate the primary documents used in commercial real estate finance and land transfer transactions and be able to understand and explain the different types of clauses and provisions typical to such documents, and the reasons for their inclusion therein.
- Students will be able to communicate their knowledge about this subject orally and in writing, to a variety of audiences.
- Students will be able to apply the course information and skills to real world situations.

Readings and Syllabus

LECTURE 1: January 18	Introduction to the Course; History and Overview of Real Estate Finance
READING ASSIGNMENT	<p>CASEBOOK:</p> <p style="padding-left: 40px;"><u>Chapter 1:</u> 1 – 13</p> <p style="padding-left: 40px;"><u>Chapter 3:</u> 103 – 109</p> <p>Supplement: Sample closing checklist <i>{this document will be available on TWEN}</i></p>
LECTURES 2 & 3: January 23 & 25	Choice of Entity; Purchase and Sale; Leasing
READING ASSIGNMENT	<p>CASEBOOK:</p> <p style="padding-left: 40px;"><u>Chapter 14:</u> 811 – 827; also review chart 828 – 829</p> <p style="padding-left: 40px;"><u>Chapter 2:</u> 17-18; 28-32</p> <p>Supplement: Sample Purchase and Sale Agreement</p> <p>Supplement: Sample Lease Agreement</p>
LECTURE 4 & 5: January 30 & February 1	Loan Applications and Commitments
READING ASSIGNMENT	<p>CASEBOOK:</p> <p style="padding-left: 40px;"><u>Chapter 4:</u> 143 – 161; 196 to <i>Ellwood</i>; 202-207; 209 – 211; 216 – 222 (skipping the “Notes & Questions” sections); 161 – 170; 180 – 195</p> <p>Supplement: Brannon, “Enforceability of Mortgage Loan Commitments” (the whole article is useful, but we will focus on Sections IV and V)</p> <p>Supplement: Samples of Loan Commitments</p>

LECTURES 6 & 7 & 8: February 6 & 8 & 13	Due Diligence: Title and Survey
READING ASSIGNMENT	<p>CASEBOOK: <u>Chapter 2</u>: 82 – 94 <u>Chapter 4</u>: 228 – 235</p> <p>Supplement: Articles on role of Title Insurance Supplement: Sample ALTA Title Insurance Policies (Owner’s, Lender’s) Supplement: Selected Endorsements (for your reference - skim) Supplement: Sample survey (for in-class reference)</p> <p><u>AFTER CLASS – Homework</u> (part of your grade is based on this): Title Mark-up Exercise Distributed February 17th after class (Due before 5pm Friday, February 18th)</p>
LECTURES 9 & 10 & 11: February 15 & 20 & 22	Notes; Review Title Mark-up Exercise;
READING ASSIGNMENT	<p>CASEBOOK: <u>Chapter 5</u>: 257 – 265; 270 (Note 6) – 311</p> <p>Supplement: Samples of Promissory Notes</p>
LECTURES 12 & 13: February 27 & March 1	Credit Enhancements and Guaranties
READING ASSIGNMENT	<p>Supplement: “Interpreting the Guaranty” article (Reference) Supplement: <i>Glendale v. Marina View Heights</i> case Supplement: <i>Colonial American v. Kosnoski</i> case Supplement: Sample Guaranty Agreements (payment and completion) Supplement: VA Code §§ 49-25 and 49-26 (for in-class reference)</p>

LECTURES 14 & 15: March 6 & 8	Mortgages and Mortgage Substitutes
READING ASSIGNMENT	CASEBOOK: <u>Chapter 3</u> : 103 - 133 <u>Chapter 5</u> : 311 - 335 Supplement: Sample Deeds of Trust
March 13 - 17	Spring Break
LECTURES 16 & 17: March 20 & 22	Loan Agreements; Special Issues in Construction Financing; Documenting the Real Estate Secured Loan I
READING ASSIGNMENT	CASEBOOK: <u>Chapter 6</u> : 337 - 355; 380 - 387 <u>Chapter 4</u> : 243 - 249 Supplement: Sample Loan Agreement Supplement: Sample Opinion Letter
LECTURES 18 & 19: March 27 & 29	Documenting the Real Estate Secured Loan II
READING ASSIGNMENT	CASEBOOK: <u>Chapter 8</u> : 459 – 465 <u>Chapter 3</u> : 133 – 141 Supplement: Sample Assignment of Leases Supplement: Sample Tenant Estoppel Supplement: Sample SNDA
LECTURES 20 & 21: April 3 & 5	Foreclosures and Enforcement of Remedies; Introduction to Negotiation Techniques
READING ASSIGNMENT	CASEBOOK: <u>Chapter 8</u> : 447 – 459; 465 – 470; 491 – 494 <u>Chapter 18</u> : 1015 – 1025 (through Note 3)

LECTURES 22 & 23: April 10 & 12	The Art of Negotiation*: Role Playing Exercise – Lender vs. Borrower <i>*Part of your grade is based on participating in the in-class negotiation exercise</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, April 15th)
LECTURES 24: April 17	Review Negotiation and Drafting Exercise; Hazardous Substances Indemnity and Environmental Issues;
READING ASSIGNMENT	CASEBOOK: <u>Chapter 19:</u> 1059 – 1081 <u>Chapter 9:</u> 555 – 585 (You may skip the Notes & Questions) <u>Chapter 8:</u> 506 – 514 Supplement: Sample Environmental Indemnity Agreement
LECTURES 25: April 19	Lender Liability and Borrower Protections; Defaults, Workouts and Refinancing
READING ASSIGNMENT	CASEBOOK: <u>Chapter 8:</u> 433 - 442 <u>Chapter 7:</u> 389 – 407
LECTURE 26: April 24	Commercial Real Estate Transfer and Finance Review
READING ASSIGNMENT	Catch-up, if any