LEGAL ISSUES IN REAL ESTATE

Course Description and Syllabus
Class Begins Promptly at 6:15 p.m.

Wiebolt Hall
339 East Chicago Avenue
Chicago, Illinois

SPRING 2003

Professors: Jack Guthman (312) 836-4034
            Anthony Licata (312) 836-4028

Office Hours: By appointment

This course is not intended to make lawyers out of business school students. It is, rather, an effort to introduce those who might become involved in real estate to legal issues which are essential elements of real estate transactions. The course, which will be taught by practitioners and participants in the field, provides an overview of the legal issues which confront the real estate executive from the commencement of a real estate transaction and throughout the relationship between the parties to such transactions.

Grading: Final grade will be based solely on final examination.
March 31  

(a) **Selection of Attorneys**

A panel discussion will focus on the manner in which businesspeople select and utilize lawyers in the course of real estate transactions. There will be special focus on "legal vs. business" advice.

Panel Members:

- **David Drew**, President, Drew Holdings, Inc.
- **James Purinton**, President & CEO, ORIX Real Estate Equities, Inc.
- **Robert Berliner**, Attorney and Developer

(b) **Purchase and Sale of Land**

The discussion will focus on topics commonly encountered in land transactions, with an orientation towards the business issues, including options vs. "free look" contracts, contingencies, conditions precedent and subsequent, and duties of the respective parties.

Lecturer:

- **Robert Berliner**, Attorney and Developer

**ASSIGNMENT:**

(a)  
- "Phases of Real Estate Development" [a checklist for use in considering outside counsel]
- "How to Hire an Attorney"
- "Mistakes To Avoid Before You Hire a Lawyer"

(b)  
- "Acquisition of Property"
- Sample Letter of Intent
- “Letters of Intent -- A Trap for the Unwary”
- Real Estate Sale Contract
- "Why You Need Title Insurance" from *Probate and Property*, June, 2001
April 7  **Land Use Regulation**

An overview of the regulatory framework in which real estate development takes place, focusing on the different types of zoning approvals, and related code problems.

Lecturer:

**Jack Guthman**, Shefsky & Froelich Ltd.

ASSIGNMENT:


April 14  **Environmental Issues**

This presentation will focus on the various environmental issues facing development, including environmental audits; disclosure requirements; Superfund liability; asbestos; wetlands and brownfields issues, and the growing utilization of "remediation insurance."

Lecturers:

**David Reynolds**, Deputy Commissioner
Department of the Environment, City of Chicago

**Kimberly Worthington**, Deputy Commissioner
Department of the Environment, City of Chicago

ASSIGNMENT:

- Outline of Remarks
- "Dig Into State EPA Act for Tools to Cultivate ‘Brownfields’"
- Materials re: Underground Storage Tanks
- "The evolution of US due diligence"
- “Using Environmental Insurance in Commercial Real Estate Transactions”
- Specimen Policy of Remediation Insurance
April 21  

Incentives

The speaker will discuss arrangements wherein public and private parties join together in the development process, with special focus on various incentive programs. The presentation will include a case study of a development which is the product of a public/private partnership.

Lecturers:

Glenn Azuma, Trkla Pettigrew Allen & Payne Inc.

ASSIGNMENT:

_  "Tax Increment Financing"
_  "TIF Rift" from Crain's Chicago Business
_  “The City that TIFs” from Crain’s Chicago Business
_  "TIFs: Too Many, Too Much, Too Often"
_  Case Study
April 28  

**Contracts: Construction and Architects**

This presentation will include a discussion of legal issues in drafting contracts, including definition of "the job," change orders; ownership of the plans; methods of dispute resolution; schedules and types of contracts used in modern construction including "lump sum" vs. "G-Max" vs. "design-build" vs. "construction management," all in the context of "fast-track development."

Lecturers:

- **Thomas Corning**, Senior Vice President, McCler Corp.
- **Robert J. Harris**, Stein, Ray & Harris

**ASSIGNMENT:**

- "Alternative Project Delivery Methods"
- Risky Business: Article from *NYT*, May 15, 2001
- "Preface: Traditional Relationships on the Building Project" [*St. Louis Law Journal*]
- "Negotiating Construction Documents: Include the Contractor" [*Probate & Property*]
May 5  (a) **Ownership Structures**

An analysis of why partnerships and limited liability companies rather than corporations are commonly used in real estate transactions with a focus on several critical federal income tax issues.

(b) **Partnership Business Issues**

Most modern real estate deals involve complex issues between the money partners and the promoters. This presentation will survey these issues including a split of proceeds after a return of capital (sometimes with a preferred return). Other issues to be discussed include allocation of decision making responsibilities, the obligations of the partnership to make capital calls and "buy-sell" arrangements as a means of resolving disputes.

Lecturer:

**Anthony R. Licata**, Shefsky & Froelich Ltd.

**ASSIGNMENT:**

- Illustration of Comparable Tax Treatment
- "Limited Liability Companies as Investment Vehicles"
- Choice of Entity for Real Estate After Check-The-Box and the Entity Explosion
- The Capital Call Problem
  - Proposed Dilution Language
  - The Buy-Sell Problem
- Proposed Buy-Sell Language
- Management Language
May 12  Financing  
This presentation will focus on contemporary financing techniques and workout strategies, including common debt structuring provisions.

Lecturer:

Anthony R. Licata, Shefsky & Froelich Ltd.

ASSIGNMENT:

To be distributed in class

May 19  Securitization and Conduits  
Groups of mortgage loans are being "bundled" into a single package, and various interests in the package are being sold by Wall Street as securities. Our speaker, whose firm is actively engaged in originating such loans and assembling packages of loans, will explain the evolution of these securities and address the current market environment.

Lecturer:

Barry Axelrod, Vice President  
Dwinn-Shaffer Mortgage Co.

ASSIGNMENT:

_  "From Main Street to Wall Street: Commercial Mortgage-Backed Securities"
_  "Conduits are still Major B and C Lenders"
_  Industrial Capital: "What is Available"
_  Sample Building Financing Memo
May 26  Memorial Day - No Class

June 2(a)  Landlord/Tenant Issues

Letter of intent; parties to the lease; net vs. gross leases; rent concessions; alterations; assignment and subletting; insurance and casualty; non-disturbance agreements; option to extend; option to expand; initial construction of tenant improvements.

Lecturer:

Sue Ann Fishbein, Piper, Marbury, Rudnick & Wolfe

(b)  Property Management

The discussion will focus on issues of interest to managers of real property.

Lecturer:

Bruce L. Boruszak, Wildman Harrold Allen & Dixon

ASSIGNMENT:

(a)  – Outline:  How to Think About a Lease from the Landlord's Point of View -- Legal Aspects

–  "Glossary of Commonly Used Lease Terms"

(b)  – (Discussion Outline)

June 10  Exam