

LEGAL ISSUES IN REAL ESTATE

Course Description and Syllabus
Class Begins Promptly at 6:00 p.m.

Wieboldt Hall
339 East Chicago Avenue
Chicago, Illinois

SPRING 2009

Professors:	Jack Guthman	(312) 836-4034
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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 business people select and utilize lawyers in the course of real estate transactions. There will be special focus on "legal vs. business" advice.

Panel Members:

Robert Berliner, Attorney and Developer
Frith C. Crandall, General Counsel, InterPark Incorporated
Dulcie L. Truitt, President, Briar Hall LLC

(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]
- "Finding and Selecting a Business Attorney" from IllinoisBusinessAttorney.com
- "Top 10 Mistakes Made When Hiring a Lawyer" from AllBusiness.com
- (b) – "Acquisition of Property" from Real Property, Probate and Trust Journal, Fall 2002
- Sample Letter of Intent
- "Letters of Intent -- A Trap for the Unwary"
- Real Estate Sales Agreement
- "Why Do You Need Title Insurance?" by W. Troy Swezey, from North Texas E-News, January 13, 2005

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:

- "The Government Approval Process" [*The Professional's Guide to Commercial Property Development*]

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:

Carolyn Hesse, Esq., Barnes & Thornburg
David Reynolds, Earth Tech, Inc.

ASSIGNMENT:

- Site Remediation Program Overview
- Site Remediation Program Frequently Asked Questions
- Making Contaminated Properties Safe
- Brownfields Cleanup and Redevelopment
- Brownfields Cleanup and Redevelopment: All Appropriate Inquiries
- Brownfields Properties with Underground Storage Tanks
- Frequently Asked Questions About Brownfields Cleanup and Redevelopment
- Environmental Land Use Control

- Superfund – Basic Information
- “Using Environmental Insurance in Commercial Real Estate Transactions” from Probate & Property, January/February 2003
- Specimen Policy of Remediation Insurance
- “Voluntary Clean-Up Programs” from Smart Business Chicago April 2005
- Legal Issues in Real Estate: The ABC’s of Environmental Law and Due Diligence- Carolyn S. Hesse’s Power Point Presentation

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.

Lecturer:

Glenn Azuma, Coniston Consulting

ASSIGNMENT:

- “Tax Increment Financing” from Illinois Municipal League-Legal Department
- “Illinois’ TIF Laws” from Illinois Tax Increment Financing
- TIFs 101: A Taxpayer’s Primer for Understanding TIFs” from Cook County Clerk’s Office
- 2007 TIF Report Shows 11.5% Revenue Jump” from Cook County Clerk’s Office, October 29, 2008
- IRS Notification re: Tax Treatment of TIF Funds
- Case Study
- Additional Materials

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, Project Executive, Walsh Construction
Robert J. Harris, Stein, Ray & Harris

ASSIGNMENT:

- An Overview of Design & Construction Delivery Systems
- "A Leading Construction Company Files for Chapter 11" from NYT, May 15, 2001
- "The New AIA Design-Build Contract from the Design-Builder's Perspective" from Probate & Property, by Sidney G. Saltz, July/August 2007

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
- “The Limited Liability Company: The Importance of Choosing the Correct Business Vehicles” by Sarah Spear, from Law and Technology for Resources for Legal Professionals, June 6, 2006
- “Limited Liability Company: The Growing Entity of Choice” by Donald J. Scotto and Sharon Mathews, Coopers and Lybrand LLP and C&L
- “Choice of Entity Considerations: A Legal Primer for New Ventures” by A.M. Nunley III, GERALYN McClure Franklin and Robert K. Robinson
- “Choice of Entity for Real Estate After Check-The-Box and the Entity Explosion” by Norton L. Steuben, from Real Property, Probate and Trust Journal, Spring 2002
- “The Economics of Real Estate Joint Ventures,” by Richard R. Spore, III, from Probate & Property, July/August 2007
- Additional Contributions of Partners & Failure to Make Pro Rata Capital Contributions
- The Capital Call Problem
- The Buy-Sell Problem
- Proposed Buy-Sell Language
- Management Language

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

Distressed Loans and Workouts: Life after the Crash

The speakers will address a number of issues which arise when real estate loans go into default and must be restructured. Special attention will be given to the need to restructure the ownership equity, income tax issues associated with debt forgiveness, enforcement of guarantees, etc.

Lecturers:

Richard E. Aderman, Shefsky & Froelich Ltd.

David A. Downey, Managing Director, Transwestern Commercial Services

ASSIGNMENT:

To be distributed in class

May 26

(a) Bankruptcy

The discussion will focus on real estate issues encountered in Chapter 7 and Chapter 11 bankruptcy cases, including treatment of leases, the sale of real estate and remedies available to lenders when bankruptcy is filed.

Lecturer:

Karen Goodman, Shefsky & Froelich Ltd.

(b) **Condominiums**

This presentation will focus on condominium conversions and condominium development; condominium documents and provisions therein; condominium property reports; and rules and regulations for condominiums.

Lecturer:

Kathryn Kovitz Arnold, Shefsky & Froelich Ltd.

ASSIGNMENT:

- (a) – “Current Issues: Impact of Bankruptcy on Commercial Leases” from Practising Law Institute, April 4-5, 2007
- “The New Bankruptcy Act: Provisions Affecting Real Estate” from American Law Institute, July 27-30, 2005
- (b) – City of Chicago Condominium Ordinance
- Selected Property Report for Development

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, Esq., Shefsky & Froelich Ltd.

(b) Property Management

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

Lecturer:

Robert Six, Executive Vice President, Zeller Realty Group

ASSIGNMENT:

- (a) – Office Leasing- Legal Aspects: How to Think About a Lease from the Landlord's Point of View -- Legal Aspects
- "Glossary of Commonly Used Lease Terms"

June 9

Exam

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