

**COMMERCIAL REAL ESTATE WORKSHOP
FALL 2016**

Course: Law 880, Section 512 3 credits

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Course Description: Law 880, 3 credits

Planning, drafting and negotiating real estate projects involving commercial acquisitions, development, financing, leasing and environmental and land use implications. **Pre- or Co-requisite:** Property, Business Organizations; Federal Income Tax [Limited Enrollment].

Course Materials: No required text. Recommended: A Practical Guide to Commercial Real Estate Transactions, 2nd. Edition, Authors: Gregory Stein, Morton P. Fisher, Jr., Marjorie P. Fisher, ABA Press.

Student Learning Outcomes: (1) To develop the knowledge and skills you need to represent the key parties in a complex commercial real estate transaction. (2) To become knowledgeable with the customs, practices and the forms typically used in commercial real estate transactions. (3) To introduce you to the concept of “transactional skills” that include: (a) understanding the client needs relating to the transaction, (b) identifying impediments to achieving its goals, (c) reviewing and negotiating the documentation of the transaction and (4) structuring of the transaction.

COURSE REQUIREMENTS

Grades will be based on an open book, final (75%), weekly assignments (15%) and class participation (10%):

1. **Assignments.** You will be given written assignments that will consist of (a) a written answer to an assigned issue or (b) assigned drafting assignments and (c) commenting on cases as set forth in the syllabus. Assignments and cases may be supplemented during the course. All written assignments are

due by 6:00 p.m. on the Friday preceding the class for which the assignments are posted. Please send all assignments to the email addresses of each of the instructors noted above.

2. ***Self-Evaluation.*** Self evaluations will be conducted in accordance with American Bar Association Standards 303 and 304.
3. ***Attendance.*** Final grades may be lowered for habitual unpreparedness or lateness. In accordance with ABA rules and UB policy, if you miss more than 2 classes you will not be allowed to take the final exam.
4. ***Class Participation.*** If you attend class and participate in discussions by volunteering answering questions and taking part in discussions, you will have met the class participation requirement.
5. ***Computers.*** Use of computers will be permitted in class, but only for class related matters.

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SYLLABUS AND REQUIRED READING

(Note: The order of classes may be changed to accommodate the schedules of the instructors and guest speakers)

August 23, 2016

INTRODUCTION TO THE WORLD OF COMMERCIAL REAL ESTATE

- A. Basic economics of a real estate transaction; follow the money
- B. Summary of legal skills required to act as counsel in a complex real estate development
- C. Identifying the parties to the transaction and their various interests
- D. Glossary of terms commonly used in a commercial real estate transaction

Prior to First Class: Prepare a brief description of your background including work experience and what you expect to get out of this course. Prepare a list of the legal skills you believe are necessary to advise a client in a complex real estate transaction. Find the Port Covington website and watch the short version on TIF financing; prepare a side-by-side chart of the “pros” and “cons” of a TIF financing.

August 30, 2016

STRUCTURING A COMMERCIAL REAL ESTATE TRANSACTION: BROKERS

- A. Choice of entity considerations
- B. Basics of limited partnerships and limited liability companies
- C. Brokers and brokerage agreements

Write a memorandum outlining the considerations do you think come into play in the choice of entity for a newly developed retail center?

Provide a brief outline of what you believe brokers bring to a transaction. Study the brokerage agreement on the website and write your proposed provision to protect the Seller if closing does not occur. Read Real Property Article Section 14-105 of the Maryland Code and Weinberg vs. Dessler, 243 Md. 347. Outline what a broker needs to do to earn a commission.

September 6, 2016

CONSTRAINTS ON DEVELOPMENT

- A. Zoning, subdivision and other governmental controls

- B. Site related constraints on development
- C. Environmental considerations
- D. Eminent Domain

Prepare a list of what site related constraints you would look for as the developer's lawyer in purchasing an undeveloped and unimproved parcel of land to be developed for a commercial real estate development.

Read and be prepared to discuss Kelo vs. The Town of New London, 545 U.S. 469 (2005). Prepare a memorandum on how you would have voted if you were deciding the case and why, and what you think is the principle issue in the case.

September 13, 2016

ACQUISITION PHASE OF DEVELOPMENT; DRAFTING TECHNIQUES

- A. Letters of intent
- B. Good faith and fair dealing
- C. Assembling land in a complex real estate transaction
- D. Introduction to Contracts of Sale

Prepare an addendum to the letter of intent in the course materials providing for (i) an extension of the feasibility period if a Phase II environmental report, (ii) limiting the Purchaser's liability to loss of the deposit, (iii) providing for a review of all tenant leases, (iv) conducting the purchase on receipt of a financing commitment of 70% of the anticipated cost of a retail center to be built on the property and commitments for the remaining 30% equity requirements. Read and be prepared to discuss Julian vs. Christopher, 320 Md., 575 A2d 735 (1990). Prepare a letter of intent to acquire an additional parcel in Port Covington; focus on the issues you believe the letter of intent should address as essential to agree upon before a contract is prepared.

September 20, 2016

ACQUISITION PHASE (continued)

Contracts of Sale (continued)

- A. Due diligence
- B. Conditions
- C. Representations and warranties
- D. Defaults and remedies

Study the Purchase Agreement in the course materials. Prepare a memorandum on behalf of the Purchaser incorporating the following terms: (i) requiring the Seller to remove and remediate an underground oil tank, (ii) requiring the Seller to replace the roof, (iii) requiring the Seller to escrow \$500,000 to correct and repair the sidewalks, parking areas and parking areas. Review the sample representations and warranties on the website; pick three and be prepared to argue for or against the inclusion or exclusion of each.

September 27, 2016

THE CLOSING: THE ART OF NEGOTIATION

- A. Preparing the closing checklist
- B. The Closing
- C. Post-Closing due diligence
- D. The Art of Negotiation

Prepare a checklist of all documents and other materials you will need at the closing. What are the skills you think are necessary to be a good negotiator? Review the sample checklist on the website; identify in writing three areas that are seemingly missing and why their inclusion is critical.

October 4, 2016

TITLE: DRAFTING TECHNIQUES

- A. Title insurance
- B. Title and survey review
- C. Typical title issues
- D. Recordation
- E. Drafting techniques (words make a difference)

Read the title commitment in the course materials and study the survey. Write a memorandum to your client advising why title insurance is necessary. Review the title commitment on the website and select three of the exceptions unique to this property; prepare a letter to the other side explaining why you believe the issue must be resolved before you accept title.

October 11, 2016

FINANCING THE TRANSACTION

- A. Financing alternatives

- B. Loan commitments
- C. Construction loans and Permanent loans
- D. Equity
- E. TIFs and PILOTS
- F. Public Private Partnerships

Read Teachers vs. Butler, 626 F.Supp. 1229 (1986). Prepare a memorandum on what you would have changed to avoid litigation. Review the City's PILOT legislation (citations on the website) and be prepared to advise a client on how the PILOT works.

October 18, 2016

FINANCING (continued)

- A. Loan documentation
- B. Representations and warranties on loan documents
- C. Non-recourse loans and non-recourse carve outs
- D. Loan Guarantees

Read the Note, Deed of Trust and Loan Guaranty. Write a memorandum as to what representation and warranties you would want from a borrower.

October 25, 2016

DEFAULTS

- A. Events of Default
- B. Lender's remedies
- C. Foreclosure
- D. Alternative dispute resolution

Write a notice to the borrower setting forth defaults in payments of the loan and taxes and setting forth the remedies you intend to take on behalf of the borrower.

November 1, 2016

CONSTRUCTION PHASE

- A. Construction documents
- B. Issues in construction documents
- C. Mechanic's liens

Read and be prepared to discuss AIA forms 101 and 201 which are available on the website. Prepare an Addendum to include the following: (i) requiring notice of a force majeure within ten days after the event, (ii) providing for liquidated damages of \$2,500 per day for late completion, (iii) providing for a unilateral termination by the Owner without payment or penalties.

November 8, 2016

COMMERCIAL REAL ESTATE LEASES

Prior to Class: Read the form of Lease on the website. Prepare a short form of a summary of the terms of the lease for your client, the tenant, emphasizing what you be are essential.

November 15, 2016

COMMERCIAL REAL ESTATE LEASES (continued)

Write an Amendment to the Lease with the following terms:

1. A renewal option of ten years.
2. A protective clause protecting your client, a men's apparel store against a competing store in the same shopping center.
3. An opt out clause if your client's store fails at a minimum rate of \$50 per square foot.

November 22, 2016

WRAP UP