



REAL ESTATE TRANSACTIONS 472A

SPRING 2013

Thursdays, 6:00 pm.-9:00 pm

Professor Anne Lanphar

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I. COURSE DESCRIPTION:

Real Estate Transaction is a 3 credit hour skills-development (practice) course intended to provide an overview of commercial real estate transactional law including real estate purchase and sale agreements, financing, options, brokerage agreements, commercial leasing, financing and miscellaneous real estate agreements. The class will include negotiating, drafting and interpreting commercial agreements. Using actual commercial forms, the course will discuss the parties to the respective transactions, their respective legal and business interests, the dynamics of negotiating and practical drafting techniques and skills. Through the use of written exercises, students will become familiar with analyzing, organizing, drafting and negotiating real estate agreements. The course will also integrate real-life ethical issues, drafting skills and practical tips and guidelines for interacting with clients and law practice.

II. LAW SCHOOL LEARNING OBJECTIVES:

Legal Analysis; Legal Writing; Client Representation

III. COURSE LEARNING OBJECTIVES:

The goal of this course is to introduce the practical application of real estate and contract law through analyzing and drafting real estate agreements.

IV. COURSE MATERIALS:

The required text books:

(a) **REAL ESTATE TRANSACTIONS: PROBLEMS, CASES AND MATERIALS** (4th Ed 2011) by Robin Paul Malloy and James Charles Smith (**ISBN13:** 9780735507159), and

(b) **EXAMPLES & EXPLANATIONS: REAL ESTATE TRANSACTIONS** (5th Ed. 2011)
(ISBN13: 9780735588554)

Additional reading will be required using Miller & Starr's CALIFORNIA REAL ESTATE which is available online through Westlaw (Database Identifier: MILCALRE).

V. COURSE INFORMATION:

i. TEACHING METHODOLOGIES.

The course will be presented utilizing a combination of lecture, the Socratic method, written exercises, class discussion and mock negotiations in class. Some assignments will require working in teams.

ii. ATTENDANCE POLICY.

Attendance and promptness is extremely important as only with a fully engaged, prepared and active class can this course be an enriching learning experience for everyone. Attendance will be taken during each class. Please see the Student Handbook for attendance requirements. However, since some course projects will require working in teams, unexcused absence can result in reduced participation credit. Students are expected to behave as legal professionals and, accordingly, late arrival, wandering in and out, or failing to return promptly from an authorized break, will be considered adversely in grading class participation.

iii. GRADING.

A. Class Participation. Students are expected to have read the assigned materials and discussion problems and to be prepared to discuss them in class. Since many of the class periods will involve review and critique of student work on the drafting problems and other written assignments, consistent class attendance and participation is expected and strongly encouraged. Points will be added or deleted, as applicable, to the final grade for attendance and participation.

B. Negotiation and/or Drafting Problems. Short negotiation and/or drafting problems will be assigned during the semester. These problems will involve drafting documents, either from "whole cloth" (i.e., without starting with a basic form) or by revising an existing document. Some of these problems: (a) will be done in two-person teams and others will be individual projects; and (b) require negotiation between students on opposing sides of the proposed transaction. Please be advised that occasionally student work product will be the basis for subsequent class discussion¹ regarding the drafting techniques and transactional dynamics. The designated specific

¹ At the first class, students will be required to execute a consent authorizing the use of their work for class discussions.

assignments and due dates for the assignments will be posted on the Course Website (See Subsection iv. below). Collectively the assignments will constitute 50% of the course grade.

C. Final. Instead of a final examination, a real estate purchase agreement (i.e., a form that is different from the one used in the course materials) will be assigned. Working individually, each student will (i) evaluate the agreement as if representing and advising one of the parties to the transaction, and (ii) prepare a written memorandum critiquing the document's provisions and suggesting amendments necessary to protect the client's interests. The agreement will be posted on the Course Website and due electronically at 4:00 pm on the final day of the exam period. This final assignment will constitute 50% of the course grade.

iv. COURSE WEBSITE.

A course website has been created on Lexis Nexis entitled Real Estate Transactions 472A ("Course Website"). Please register on the site. Please refer to this site prior to each class for any announcements regarding class discussion problems, the assignments, or other relevant information regarding the course. A copy of this syllabus is posted on the Course Website, and the questions for class discussion during each class period will also be posted prior to the class. **PLEASE NOTE: The assignment for the first class will be posted on the Course Website.**

v. COURSE TOPICS.

The course will address these topics in roughly the following order:

- Letters of intent
- Property acquisition:
 - General observations and considerations regarding acquisition process.
 - Negotiating
 - Brokerage agreements
 - Acquisition agreements:
 - Parties to such agreements; statutes of frauds
 - Following the money – the purchase price, initial deposits, components of mortgage debt, and financing contingencies
 - The subject property – inspections, seller liability for defective conditions, fixtures, risk of loss
 - Title – marketable title, alternatives to the marketable title standard, contract provisions, building and zoning codes
 - Contingencies
 - Representations and warranties
 - Time for performance
 - Miscellaneous provisions

- Remedies for breach: mediation, arbitration, judicial review; specific performance; liquidated damages
 - Option agreements
 - Escrow/settlement services:
 - Documents
 - Deeds
 - Title insurance
 - Legal descriptions
 - Title insurance
- Financing:
 - Commercial financing overview
 - Critical issues including prepayment penalty, usury, etc.
 - Foreclosure
 - Allocating foreclosure proceeds and anti-deficiency legislation
 - Alternatives to foreclosure: Workouts and deeds in lieu of foreclosure
 - Selecting an entity for real estate investment
 - Alternative mortgage instruments (AMI's)
- Development and construction:
 - Financing
 - Construction contracts
 - Mechanics' liens
 - Obtaining entitlements for real estate development
- Leasing:
 - Commercial leasing
 - Types of property
 - Types of leases
 - Financing leasehold interests
 - Leases as financing devices

Other topics will be addressed as time permits.