

**WESTERN STATE
COLLEGE OF LAW
REAL ESTATE TRANSACTIONS
SECTION 472A**

**SYLLABUS, POLICIES, AND ASSIGNMENTS
2018 SPRING SEMESTER
Professor Sheppard**

CLASS MATERIALS:

Required Text: George Lefcoe, **REAL ESTATE TRANSACTIONS, FINANCE, AND DEVELOPMENT**, 6th Ed., (2009 LexisNexis)

COURSE COVERAGE AND OPPORTUNITIES:

You will be presented with opportunities to learn how an interest in residential or commercial real property is bought, sold, financed, refinanced, or developed and the services an attorney might render with respect to a particular type of real estate transaction. You will have the opportunity to review and apply various principles of property law that you first encountered in the basic Property courses (Property I and Property II). You will also have the opportunity to learn principles of property law that were not, or which may not have been, covered in your Property I and Property II classes. Furthermore, you will engage in graded, course exercises that will provide to you the opportunity to employ and hone your legal research, legal analysis, and legal writing skills.

The **topics that will be covered in this course** are:

- General observations about buying and selling real estate in the United States.
- Deciding whether to rent or to buy, federal income tax considerations, and negotiating pointers
- The marketing of residential or commercial realty: real estate brokers, listing agreements, applicable securities law
- Purchase-and-sale 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
 - The subject property – inspections, seller liability for defective conditions, fixtures, risk of loss
 - The quality of a seller's title – marketable title, alternatives to the marketable title standard, contract provisions, building and zoning codes

- Time for performance
- The merger doctrine
- Remedies for breach: mediation, arbitration, judicial review; specific performance; liquidated damages
- Residential mortgage lending
- Commercial mortgage lending
- Prepayment of Mortgage Loans
- The selling or further hypothecating of mortgaged property by the debtor
- Recording Acts
- Title Insurance
- Real estate escrows and closings
- Deeds
- Descriptions of lands and boundary disputes
- The Mortgagee's interest in the security property
- The Mortgagee's right to rents before and after foreclosure
- Mortgage foreclosure
- Allocating foreclosure proceeds and anti-deficiency legislation
- Alternatives to foreclosure: Workouts and deeds in lieu of foreclosure
- Development and construction financing
- Construction contracts
- Mechanics' liens and stop notices
- Alternative mortgage instruments (AMI's)
- Leases as financing devices
- Commercial leasing
- Obtaining entitlements for real estate development

Topics addressed in the text that are **NOT** part of the assigned reading for this course are:

- Methods of Financial Analysis, etc. (Chapter 27, pp. 591 – 622)
- Tax Matters in Real Estate (Chapter 28, pp. 623 – 659)
- Selecting an Entity for Real Estate Investment (Chapter 29 pp. 661 – 689)
- Public/Private Real Estate Ventures (Chapter 34, pp. 855 – 891)

SKILLS AND VALUES

A task force report exists that is commonly referred to as “The McCrate Report.” The authors of that report examined the legal skills and values listed above as well as other skills and values. [Section on Legal Education & Admissions to the Bar, American Bar Association Legal Education and Professional Development – An Educational Continuum (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992). A collection of law review articles that represent supporting and critical views of “The McCrate Report” appear in Volume 69 of the *Washington Law Review* published in July of 1994.]

On page 1 of his “Property Law Simulations” text, Professor Sprankling notes: “The McCrate Report had little impact on legal education. But the Carnegie report has been more successful, prompting many law schools to make curricular changes that expand opportunities for experiential learning.” Actually, Western State was one of the few law schools that took special note of the McCrate Report prior to the publication of the Carnegie report as evidenced by its Mission Statement, course offerings, and methods of instruction.

ARGOSY UNIVERSITY INSTITUTIONAL LEARNING OUTCOMES

The Argosy University Institutional Learning Outcomes are:

- 1. Analytical Reasoning**
Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems.
- 2. Effective Communication**
Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation.
- 3. Information Competency**
Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action.
- 4. Interpersonal Effectiveness**
Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals.
- 5. Personal and Professional Integrity and Ethical Behavior**
Demonstrate a multi-dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.
- 6. Professional Competence**
Apply skills appropriate to program objectives and employ critical reasoning to contribute to one’s field and profession.

WESTERN STATE COLLEGE OF LAW – PROGRAMMATIC LEARNING OUTCOMES

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

- (1) Doctrinal Knowledge**
Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Associations, Evidence, Civil Procedure,

Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternative dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities and differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author's or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' backgrounds and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

COURSE METHODOLOGY:

Classroom instruction and interaction in this course will take the form of in-class discussions and collaborative learning exercises. In addition, members of the class will be required to make an in-class presentation regarding a topic that pertains to real estate transactions.

Members of the class will be divided into collaborative learning groups (sometimes referred to as firms). The members of the class will be given the opportunity to select their respective partners during the initial class session. If the members of the class cannot agree on the membership of each firm, I will select the membership of each firm using a random selection process. Each firm will be comprised of two to four students depending upon the number of students enrolled in the course. Because your course grade points, which, in turn, will determine your course grade, will be determined by the level of quality of the work product of your collaborative learning group, the goal is for every collaborative learning group to be comprised of the same number of members of the class. For example, if there are twelve members of the class, there will be four collaborative learning groups with each group comprised of three members of the class. As an additional example, if there are fifteen members of the class, there will be five collaborative learning groups with each group comprised of three members of the class. As a final example, if there are ten members of the class, there will be five collaborative learning groups with each group comprised of two members of the class.

SEMESTER ASSIGNMENTS, COURSE FINAL EXAM, AND GRADING:

Your grade in the course will be determined by points that you received as determined by the score that is earned by your collaborative learning group or “firm” regarding each graded, collaborative learning assignment and the quality of the final exam work product submitted by your collaborative learning group. The course final exam will be a take-home exam.

Forty percent of your course grade will be based on the points you receive regarding the collaborative learning assignments. Sixty percent of your course grade will be based on the final exam score earned by your collaborative learning group.

Each member of a collaborative learning group or “firm” will receive the same score regarding a collaborative learning assignment and the course final exam. For example, if I assess the work product submitted by “firm #1” to be worth 80 points out of a possible 100 points, each member of that “firm” will be credited with 80 points for that assignment. Additionally, if I assess the final exam work product submitted by “firm #1” to be worth 95 points, each member of that “firm” will be credited with 95 points as her or his final exam score.

We will discuss this aspect of the course in greater detail during the initial class session.

OFFICE HOURS, OFFICE TELEPHONE, E-MAIL, FAX:

I encourage you to communicate with me regularly. If you are not able to meet with me during my office hours, please do not hesitate to communicate with me via e-mail. If it becomes necessary to do so, you may request that we meet at a time other than my posted office hours.

I plan to maintain the following office hours **beginning** Wednesday, January 17, 2018, and **ending** Tuesday, May 1, 2018:

Mondays: 9:00 a.m. until 10:00 a.m. and 3:15 p.m. until 6:00 p.m.
Tuesdays: 10:00 a.m. until 2:00 p.m.
Thursdays: 2:00 p.m. until 5:30 p.m.

Use the “Faculty Appointments Book” to reserve time to meet with me during my office hours. You must reserve time to meet with me during office hours at least 24 hours prior to the time you wish to meet with me. You may reserve a maximum of two consecutive blocks of time (i.e., one-half hour) per office appointment. **Appointments for a set of two or more students at a time are encouraged.**

I will not have office hours during the semester break (Monday, March 12 through Friday, March 16).

If your schedule of classes or your work schedule will not permit you to meet with me during my posted office hours, **send me an email** to request to meet with me at a time that will be convenient for both of us.

You may contact me via e-mail by addressing your communication to csheppard@wsulaw.edu.

You may contact me via telephone by calling (714) 459-1152. The faculty fax number is (714) 525-2786.

WEB COURSE:

Additional course material, information, and other matters are and will be posted to my Real Estate Transactions web course. You will be able to enroll in that web course on and after 9:00 A.M. on Monday, January 8, 2018. To enroll in that course website:

1. Go to <http://webcourses.lexisnexis.com>.
2. Enter your LexisNexis identification number where indicated.
3. Click on the Browse Course Catalog link.
4. Click on the link for Western State.
5. Click on the "Enroll" button next to the course name:
6. Enter the access code where indicated. The access code is SHEPPARDRET18.
7. Click the submit button.

If you encounter any problem enrolling in that web course, please let me know.

ATTENDANCE, CLASS PARTICIPATION, DECORUM, AND SEATING:

Class attendance is mandatory. If you miss more than six hours of class sessions, you will be subject to being administratively withdrawn from the course. I refer you to the applicable sections of the Western State University College of Law "Student Handbook" ("the Handbook") regarding attendance. Please take note that those provisions of the Handbook are to be treated as being part of this syllabus as though they were reprinted verbatim in this portion of this syllabus.

You should be prepared to participate in class on a regular basis. In order to be properly prepared for class, you are required to study all portions of the reading assignments. Properly preparing yourself for class includes, but is not limited to, reading and briefing each of the principal cases included in the assigned reading, making an effort to resolve each of assigned text questions and reading and reviewing all footnotes included in the assigned reading.

You are expected to maintain proper decorum when entering, participating in, and leaving class sessions. You should become familiar with the appropriate provisions of the

Handbook regarding the behavior expected of you as a member of the Western State community.

A seating chart will be distributed during the initial session of the class.

DISABILITY SERVICES STATEMENT:

Western State College of Law provides accommodations to qualified students with disabilities. The Disability Services office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean of Student Services and Disabilities Services Coordinator, Donna Espinoza, whose office is located in the Student Services Suite. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be required to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but effective only upon the student sharing approved classroom accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza or Dean Susan Keller.

EXPECTATION OF THE MINIMUM TIME I EXPECT YOU TO DEVOT TO OUTSIDE PREPARATION TIME

I expect you to devote **at least 15 hours** a week outside of the classroom toward the completion of assigned course work.

READING ASSIGNMENTS:

You are required to complete the study of all of the text material included in the assigned reading prior to the commencement of the class during which that material will be addressed. You will not gain the full benefit of the classroom discussions or other in-class activities or exercises if you have not actively studied the assigned reading.

The table of reading assignments begins on the next page.

Wk.	Dates	Reading	Topics
1	Wed: 01-17 Mon: 01-22	pp. 001 – 028	Course admin. Matters & open discussion Buying and Selling Real Estate in the U.S.; Deciding to Own or Rent
2	Wed: 01-24 Mon: 01-29	pp. 029 - 061 pp. 063 – 095	Real Estate Brokers, Listing Agreements, and Applicable Securities Laws Parties to Purchase and Sale Agreements; Statute of Frauds; Purchase Price; Financing contingencies; Conditions of the property; Fixtures; Risk of Loss
3	Wed: 01-31 Mon: 02-05	pp. 095 – 126 pp. 127 – 166	Financing contingencies; Conditions of the Property; Fixtures; Risk of Loss The Quality of Seller’s Title; Time for Performance; The Merger Doctrine; Terminating Real Estate Contracts
4	Wed: 02-07 Mon: 02-12	pp. 167 – 195 pp. 197 – 223	Residential Mortgage Lending Commercial Mortgage Lending; Prepayment of Mortgage Loans
5	Wed: 02-14 Tue: 02-20*	pp. 225 – 256 pp. 257 – 285	The Sale or Pledge of Mortgaged Property by the Borrower Recording Acts
6	Wed: 02-21 Mon: 02-26	pp. 287 – 310 pp. 311 – 333	Title Insurance Real Estate Closings and Escrows
7	Wed: 02-28 Mon: 03-05	pp. 335 – 360 pp. 361 – 388	The Deed Surveys, Land Descriptions, and Boundary Disputes
8	Wed: 03-07 Mon: 03-12	pp. 389 – 419 -----	The Mortgagees Interest in the Security Property Semester Break – No Class Session
9	Wed: 03-14 Mon: 03 -19	----- pp. 419 – 451	Semester Break – No Class Session The Mortgagee’s Interest – continued; Mortgage Foreclosure
10	Wed: 03-21 Mon: 03-26	pp. 452 – 479 pp. 481 – 494	Mortgage Foreclosure - continued; Foreclosure workouts and deeds in lieu
11	Wed: 03-28 Mon: 04-02	pp. 495 – 524 pp. 525 – 559	Development and Construction Financing Construction Contracts
12	Wed: 04-04 Mon: 04-09	pp. 561 – 590 pp. 691 – 723	Mechanics’ Liens and Stop Notices Alternative Mortgage Instruments
13	Wed: 04-11 Mon: 04-16	pp. 725 – 748 pp. 749 – 779	The Lease as Financing Device Commercial Leases
14	Wed: 04-18 Mon: 04-23	pp. 780 – 794 pp. 795 – 814	Commercial Leases – continued Entitlements; Legal Challenges re Land Use; Subdivision Map Acts
15	Wed: 04-25 Mon: 04-30	pp. 815 – 836 pp. 836 – 854	Zoning Vested Development Rights; Environmental Laws

* Monday Classes meet on Tuesday, February 20 (“Legislative Day”)