

**WESTERN STATE
COLLEGE OF LAW
SYLLABUS, POLICIES, AND READING ASSIGNMENTS
REAL ESTATE TRANSACTIONS
SECTION 472A
2021 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 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, legal writing, and collaboration 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)
- Public/Private Real Estate Ventures (Chapter 34, pp. 855 – 891)

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 class discussions and collaborative learning activities.

COLLABORATIVE LEARNING GROUPS

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 students enrolled in 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 students enrolled in 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 twenty students enrolled in the class, there will be five collaborative learning groups with each group comprised of four members of the class.

SEMESTER ASSIGNMENTS, COURSE FINAL EXAM, AND GRADING

Your grade in the course will be determined by the points earned by your collaborative learning group 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 earned by your collaborative learning group regarding the collaborative learning assignments to be performed prior to the final day of classroom instruction and discussion. 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 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 "Group #1" to be worth 80 points out of a possible 100 points, each member of that group will be credited with 80 points for that assignment. Additionally, if I assess the final exam work product submitted by "Group #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.

EXPECTATION OF YOUR AMOUNT OF OUTSIDE PREPARATION TIME

I expect you to devote a MINIMUM of TWELVE HOURS a week to prepare for each three hours of class time.

ZOOM CLASS SESSIONS AND ZOOM OFFICE CONFERENCES

Unless you are notified otherwise, our semester class sessions will be conducted using Zoom.

Carefully review and adhere to the following requirements regarding Zoom sessions:

- Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.
- Arrive to a class Zoom session early and dressed as you would to attend an in-person class session.
- Your camera must be turned on for the duration of either a class Zoom session or a Zoom office conference. If you desire, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera.
- Come prepared, as you would for an in-person class session or in-person office conference. Participation in Zoom classes is as important as it is during an in-person class session.
- Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.
 - Zoom classes are not YouTube or Netflix. You should be actively engaged in answering questions, taking notes, writing down questions you wish to ask later during class or during office hours, etc. This will not only help you stay engaged and participating in class, it will also help your learning in the online format.
- If you have to miss a Zoom session, or arrive late, or leave early, notify me in advance; as you would for an in-person class.
- If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify me so other accommodations can be explored.
- Do not post screenshots or recordings of any Zoom classes or Zoom office conferences on social media. Such actions will constitute a violation of the Student Honor Code. If you need access to a recording of the Zoom session, please contact me.
- Sign into Zoom with the name under which you are registered for class. If you prefer to be called by a different name or nickname, please notify me in advance to avoid being marked as absent.
- Unless I instruct you otherwise, mute your microphone when you are not speaking. Unmute your microphone to ask a question, or to respond to a question, or to make a comment.

- If you intend to use your computer to take notes and/or to use the eBook version of the course text, you may not be able to easily switch between those apps and the Zoom session. This could undermine your ability to pay attention to the class discussion. You must figure out how you will resolve that technological issue before our first class session and consider possible modifications to your normal mode of note taking (e.g., switch to taking notes by hand) or using a two-screen set-up.
- Zoom has a number of tools available for you to use as a student: yes/no symbols, raise hand and thumb icons, share screen if I permit you to use that tool, chat windows, etc. Please familiarize yourself with those tools before class so that you can use them to the extent I allow you to use those tools. I will provide additional information to you about the way in which you are to use a particular tool in during a particular Zoom class session.
- From time-to-time, I may utilize various interactive functions in Zoom such as polling questions, breakout rooms, etc. I will expect you to participate fully in any such activities and functions; for example, answering polling questions, speaking with your classmates during breakout sessions, and so forth.

LEXISNEXIS CLASSROOM 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 after 9:00 A.M. on Monday, January 13, 2020. The last day to access the web course material is Sunday, May 31, 2020. To enroll in the web course:

1. Log into LexisNexis for Law School at <https://www.lexisnexis.com/lawschool/>.
2. In the **Student** view, click the **Add A Course** link found on the right-hand side of the page.
3. Locate my name (Sheppard); then click my name.
4. Locate **Select Course to Enroll**; locate Real Estate Transactions #122970 and click.
5. Follow the instructions to enroll in the Real Estate Transactions Lexis Classroom
6. If you are directed to enter a password, enter: J9KR9H

If you encounter a problem while attempting to enroll in the web course, please contact a LexisNexis representative, or Faculty/Academic Support person Julie Kohler (714-459-1128), or Library Director Sarah Eggleston (714-459-1110).

ATTENDANCE, CLASS PARTICIPATION, DECORUM, AND SEATING

Attendance in class is mandatory. If you are absent from more than six hours of class sessions, you will be subject to being administratively withdrawn from the course. If you have not already done so, you should study the appropriate portions of the current edition of the *Student Handbook* regarding the College of Law's attendance policy.

Due to possible differences in the manner in which course materials are covered in different sections of a course, you are **not** permitted to "make-up" a missed class by attending another section of this course regardless of whether the other section is taught by another professor or by me.

I will keep attendance records using Zoom attendance reports.

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 the assigned text questions, and reading and reviewing all footnotes included in the assigned reading.

I expect you to maintain proper decorum during each class session. You are also required to adhere to the College of Law's "Principles of Community," and "Honor Code," and other conduct policies included as part of the current edition of the *Student Handbook*.

DISABILITY SERVICES STATEMENT

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities 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 Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is located in the Student Services Suite 119. 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 asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are 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 please notify Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

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 if you have not actively studied the assigned reading before those discussions or activities occur.

The table of assignments is on the next page.

| Wk. | Dates | Reading | Topics |
|------------|-------------------|--|--|
| 1 | 01-22-2021 | pp. 001 – 061 | Course admin. Matters & open discussion Buying and Selling Real Estate in the U.S.; Deciding to Own or Rent, Real Estate Brokers, Listing Agreements, and Applicable Securities Laws |
| 2 | 01-29-2021 | pp. 063 - 126 | Parties to Purchase and Sale Agreements; Statute of Frauds; Purchase Price, Financing Contingencies; Condition of the Property; Fixtures; Risk of Loss |
| 3 | 02-05-2021 | pp. 127 – 180 | The Quality of Seller’s Title; Time for Performance; The Merger Doctrine; Mediation; Arbitration; Specific Performance; Lis Pendens (Notice of Pending Action); Liquidated Damages; Residential Mortgage Lending |
| 4 | 02-12-2021 | pp. 180 – 242 | Residential Mortgage Lending; Commercial Mortgage Lending; Prepayment of Mortgage Loans; The Sale or Pledge of Mortgaged Property by the Mortgagor |
| 5 | 02-19-2021 | pp. 243 – 285 | Recording Acts |
| 6 | 02-26-2021 | pp. 287 – 333 | Title Insurance; Real Estate Closings and Escrows |
| 7 | 03-05-2021 | pp. 335 – 388 | Deeds; Surveys, Land Descriptions, Boundary Disputes |
| 8 | 03-12-2021 | pp. 389 – 440 | The Mortgagees Interest in the Security Property; Mortgagee’s Right to Rents Before and After Foreclosure; Mortgage Foreclosure |
| 9 | 03-19-2021 | | Semester Break – No Class Session |
| 10 | 03-26-2021 | pp. 440 – 494 | Mortgage Foreclosure; Allocating Foreclosure Sale Proceeds; Alternatives to Foreclosure; Workouts and Deeds-in-Lieu of Foreclosure |
| 11 | 04-02-2021 | pp. 495 – 559 | Development and Construction Financing; Construction Contracts |
| 12 | 04-09-2021 | pp. 541 – 590 | Mechanics’ (or Construction) Liens |
| 13 | 04-16-2021 | pp. 661– 666; 670-671; 677-679; 683-684; 691-765 | Selecting an Entity for Real Estate Investment; Alternative Mortgage Instruments; The Lease As Financing Device |
| 14 | 04-23-2021 | pp. 765 – 814 | The Lease As Financing Device; Commercial Leasing; Obtaining Entitlements for Real Estate Development |
| 15 | 04-30-2021 | pp. 815 – 854 | Obtaining Entitlements for Real Estate Development |