Real Estate Transactions and Deal Structuring  
CRP 6560

Cornell University  
Spring 2016

Instructor  
Phil Greenberg, CFA  
Lecturer  
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Teaching Assistant  
Ben Trussell  
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Schedule  
198 Statler  
Monday/Wednesday  4:30pm to 5:45pm

Office hours:  
By appointment, always available after class

COURSE PREREQUISITES

There are no pre-requisites for the course

COURSE DESCRIPTION

Real Estate Transactions and Deal Structuring will examine real estate deals through a practitioner perspective within a case study and transactional approach. The course looks at the transactional components and structuring of real estate deals and related parties at each step in creating value from real estate, including acquisition and assemblage; due diligence; sourcing and financing; structuring the venture/parties; operation; disposition; and tax consequences. Additional issues within deal structuring that may be included are negotiation, managing risk including litigation and environmental issues, and analysis of financing techniques and related tax consequences, and consequences when deals go bad, including workouts and bankruptcy. The case study format will address deals from the perspectives of selected parties, which may include investment fund manager, banker/lender, developer, joint venture partner/investor, and
owner. The course may include assignments and exercises where students analyze real estate transactions, prepare and negotiate documents, and present transactions and deals to review entities.

**COURSE COMMUNICATION**

The course site for Real Estate Transactions and Deal Structuring will be on Blackboard with course communication centered on that site. The site is at [www.blackboard.cornell.edu](http://www.blackboard.cornell.edu). Log in with your net ID and password and select the course.

**NOTE ON PRACTITIONER FOCUS**

Real Estate Transactions and Deal Structuring is designed to make selected use of real estate practitioners and, as such, video-conferencing and guest lecturer visits will be a featured component of the course, particularly during the deal structuring part of the course.

**READINGS/MATERIALS**

Selected Readings will be provided in a course reader or posted to the course via Blackboard. Readings and assignments may be posted to the course site during the semester, and students are required to visit the course site routinely for course updates and assignments. Readings for each lecture are expected to be completed in advance of each respective class.

**COURSE REQUIREMENTS**

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<thead>
<tr>
<th>Requirement</th>
<th>Weight</th>
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<tbody>
<tr>
<td>In-class Case &amp; Reading Discussion and Attendance</td>
<td>15%</td>
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<tr>
<td>Applied Learning Assignment(s)</td>
<td>25%</td>
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<tr>
<td>Midterm Exam</td>
<td>25%</td>
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<tr>
<td>Final Exam</td>
<td>35%</td>
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**ATTENDANCE POLICY**

Everyone will be expected to attend class regularly and to contribute to classroom discussions in a meaningful, informed way. Absence may impact the classroom participation grade as well as academic work team performance, which could negatively impact one’s grade for the course.

**OVERVIEW OF MAJOR COURSE THEMES**

**OVERVIEW MODULE**

Course Overview: The Real Estate Transaction Process
Attorney’s Role in Real Estate Transactions
Real Estate Brokerage

**REAL ESTATE TRANSACTIONS MODULES**

Acquisitions and Assemblage
Real Estate Transactions and Deal Structuring
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Real Estate Purchase & Sale Agreements
Due Diligence & Contractual Relationships with Service Providers
Real Estate Debt Financing
The Real Estate Closing, Conveyance, and Title Matters

REAL ESTATE TAX MODULES
Overview of Real Estate Tax
Tax Structuring & Consequences in Real Estate
Tax Issues in Real Estate Disposition & Tax-Deferred Exchanges

REAL ESTATE DEAL STRUCTURING MODULES
Real Estate Joint Ventures – Parties to the Deal
Real Estate Private Equity – Capital Structures, Fund Sourcing & Deployment
Economic Relationships & Distributions
Lease Structuring & Analysis
Negotiating and Structuring the Complex Real Estate Deal
Alternative Investment Strategies in Real Estate

COURSE SCHEDULE AND READINGS

January 27 Course Overview
Course Overview
Introduction to the Real Estate Transaction Process
Role of the Attorney in Real Estate Transactions

Supplemental Readings/Resources: Pages
None

February 1 Acquisition, Assemblage & Entitlement
Tools to Acquire Real Property

Guest Lecturer: John Novarr, Novarr-Mackasey

Supplemental Readings/Resources: Pages
McMahan, John. Note on Property Acquisition. 243-276

Shepherd, Kevin L. Rights of First Refusal: Poison Pills and Bad 52-55

February 3 Brokerage and Agency
Listing Agreements
An Earned Commission
Agency Relationships

Guest Lecturer: Jon Epstein, Avison Young (WebEx) – CLASS IN 396 STL
### Supplemental Readings/Resources:

<table>
<thead>
<tr>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johnson, Alex M. Jr. <em>Broker-Vendor Agreements</em>. Understanding Modern Real Estate Transactions 2nd.</td>
<td>11-28</td>
</tr>
<tr>
<td>Legal Memo: <em>When a Real Estate Broker’s Commission is Due.</em>  NYS Department of State.</td>
<td>2 pp.</td>
</tr>
<tr>
<td>Legal Memo: <em>Real Estate Brokers and the Unauthorized Practice of Law.</em>  NYS Department of State.</td>
<td>2 pp.</td>
</tr>
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</table>

#### February 8

**Letter of Intent (LOI)**

*Preparing to Contract*

<table>
<thead>
<tr>
<th>Supplemental Readings/Resources:</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goldberg, Catherine T., <em>A Model Letter of Intent for the Purchase and Sale of Property</em>. Practical Real Estate Lawyer (May 2010)</td>
<td>43-50</td>
</tr>
<tr>
<td>Gosfeld, Gregory G., <em>The Structure and Use of Letters of Intent as Prenegotiation Contracts for Prospective Real Estate Transactions</em>. Real Property, Probate and Trust Journal (Spring 2003)</td>
<td>99-168</td>
</tr>
</tbody>
</table>

#### February 10

**Commercial Real Estate Purchase and Sale Contracts**

*Purchase & Sale Contracts  Warranties & Representations  Drafting Issues*

<table>
<thead>
<tr>
<th>Supplemental Readings/Resources:</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Durham, James et al. <em>PURCHASE OF THE SITE</em>. Commercial Real Estate Transactions. 2nd Ed.</td>
<td>217-238</td>
</tr>
<tr>
<td>Johnson, Alex M. Jr. <em>Purchase &amp; Sale Contract</em>. Understanding</td>
<td>41-64</td>
</tr>
</tbody>
</table>
Modern Real Estate Transactions 2nd.

Johnson, Alex M. Jr. *Breach of the Purchase & Sale Contract.* 79-98
Understanding Modern Real Estate Transactions 2nd.

(Jan/Feb 2005)

February Break (Feb 13 -16)

February 17 Commercial Real Estate Contracts
Drafting Issues (continued)
Breach & Remedies

Assignment #1 (LOI) Due

Supplemental Readings/Resources: Pages
*PALMER V. ZAKLAMA* Court of Appeal, Fifth District, California, 2003. 109 Cal. App. 4th 1367, 1 Cal. Rptr. 3d. 116

February 22 Due Diligence

Site Analysis
Surveys
Zoning
Economics of the Deal

*Guest Lecturer: Keith Brenan, The Weitzman Group*

Supplemental Readings/Resources: Pages


Weitzman Group Case – available via Blackboard

February 24 Due Diligence, cont…..

Tenant Estoppels
Property Condition Reports  
Environmental Reports  

**Guest Lecturer: James Eisenberg, Urban American**

Supplemental Readings/Resources:  
*D ARBOUZE V. CHEVRON CORP.* US District Court, E.D. Pennsylvania (1998)  
6 pp.

3 pp.


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**February 29**  
Advanced Financial Modeling  
Back of Envelope – LOI  
Sharpened Pencil – PSA  
Last Look – Due diligence stage  
Retrades

**Assignment #2 (PSA) Due**

**Guest Lecturer: Spencer Burton (Baker ’15), Northwestern Mutual Real Estate (skype)**

Supplemental Readings/Resources:  
TBD

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**March 2**  
Real Estate Debt Finance  
Lender’s and Borrower’s Perspectives in Real Estate Finance  
Captive Finance  
Seller Financing  
Loan Commitment

**Guest Lecturer: Matthew Mitchell, Steeprock Capital, LLC**

Supplemental Readings/Resources:  
Milano, Maria. *Commercial Real Estate Financing: The Borrower’s Perspective.*  
*Practical Real Estate Lawyer* (July 2009)  
20 pp.

Ward, Everett S. *Tips for Negotiating a Loan Application*  
*Practical Real Estate Lawyer* (January 2009)  
12 pp.

Durham, James et al. *THE FINANCING PROCESS Commercial Real Estate Transactions.*  
335-350

Durham, James et al. *BASIC LOAN TERMS Commercial*  
373-386
Real Estate Transactions.

Durham, James et al. MORTGAGES OF REAL ESTATE. Commercial Real Estate Transactions.


Durham, James et al. RECOURSE VERSUS NON-RECOVERY LIABILITY. Commercial Real Estate Transactions.

Durham, James et al. CREDIT ENHANCEMENTS: GUARANTEES Commercial Real Estate Transactions.

Durham, James et al. CREDIT ENHANCEMENTS: LETTERS OF CREDIT. Commercial Real Estate Transactions.

Prendergast, James D., Secured Real Estate Mezzanine Lending, Practical Real Estate Lawyer, March 2007

Prendergast, James D., and Keith Pearson., How to Perfect Equity Collateral under Article 8, Practical Real Estate Lawyer, November 2004

March 7 Real Estate Debt Finance

   CMBS 1.0, 2.0, and beyond

Supplemental Readings/Resources:

TBD

March 9 Title Issues & Preparing for Closing

   Conveyance
   Title Insurance

Supplemental Readings/Resources:

Russell, Ronald G. Understanding the Title Insurance Policy, Practical Real Estate Lawyer (May 2005)

Durham, James et al. ASSURING GOOD TITLE. Commercial Real Estate Transactions.

NORTH BAY COUNCIL, INC., BOY SCOUTS V. BRUCKNER

March 14 The Real Estate Closing
Conducting the Real Estate Closing
Post-Closing Matters

Supplemental Readings/Resources:

March 16 Real Estate Tax
Overview of Real Estate Tax
Choice of Ownership Forms
Real Estate as Tax Shelter

Supplemental Readings/Resources:

March 21 Real Estate Tax, Cont…..
Rehabilitation Tax Credit
Tax considerations in Real Estate Operations
Tax-deferred exchanges (1031)
Involuntary Conversions

Assignment #3 (Rupert Case) Due

Guest Lecturer: David Rupert (Baker Advisory Board), Griffin Capital

Supplemental Readings/Resources:

March 23 Mid-Term Exam

Spring Break (March 26 – April 3) – NO CLASSES

April 4 Introduction to Real Estate Private Equity
Introduction to Real Estate Private Equity
Supplemental Readings/Resources:


April 6

Fund Structures & Real Estate Joint Ventures

- Why Joint Ventures for Real Estate
- Different Forms of Joint Ventures
- Range of Terms & Fund Structures

ERISA

Supplemental Readings/Resources:


Spore, Richard R. III. *Management and Governance of Real Estate Joint Ventures*.

April 11

Exit Strategies and Secondary Interests

Understanding Secondary Interests in Real Estate

*Guest Lecturer (Skype): Jamie Sunday, Landmark Partners*

Supplemental Readings/Resources:


April 13

Deal Terms, Fees, and Fund Governance/LP-GP Perspectives

Adjudicating the Risk Exposures from LP-GP Perspectives

Supplemental Readings/Resources:


University Investments Office (2011)

April 18  Understanding Investment Return: Financial Tiering and Distribution Waterfalls
          Cash Flow Waterfall – Double Promotes
Supplemental Readings/Resources:  Pages

April 20  Understanding Investment Perspectives and Return Expectations
          Partnerships in Practice
Supplemental Readings/Resources:  Pages
Reiss, Dale Ann, et. al.  Opportunistic Investing and Real Estate Private Equity Funds  Wharton Real Estate Review. Spring 2002

April 25  Other Types of Real Estate Investors
          Local Operators
          Mom & Pops
          REITs (Public and Non-traded)
          Corporations
          Intergenerational Investors
          Sovereign Wealth Funds
Assignment #4 (Waterfall) Due
Supplemental Readings/Resources:  Pages

April 27  Leases
          Lease Structuring & Analysis
          Lease Negotiations
Supplemental Readings/Resources:  Pages
TBD

May 2  Sale-Leaseback
          Why Sale-Leasebacks exist
          Sale Leaseback Strategies
          Corporate Credit/Tenant Analysis
Assignment #5 (Solar Farm Lease) Due

Guest Lecturer:  Gordon Whiting (CALS ‘87), Angelo, Gordon & Co.

Supplemental Readings/Resources:  Pages
TBD
May 4  Alternative Real Estate Investment and Deal Structures
The Investment Committee Process
The Deal Champion
Final Decision Making
Individual Retirement Accounts – Self Directed IRAs
EB – 5
Crowdsourcing

May 9  Putting It All Together
A Command of the Key Components
The Art & Science of Successful Deal Making
Supplemental Readings/Resources: TBD

May 11  Review for Final Exam

End of Semester

Final Exam Schedule
TBD - Room to be announced. Final exam schedules are expected to be released by the faculty on February 16th.