Real Estate Transactions and Deal Structuring
CRP 6560

Cornell University
Spring 2015

Instructor
David L. Funk, Ph.D
Director, Baker Program in Real Estate
489 Statler Hall
E-mail: dfunk@cornell.edu
Office: (607) 255-7110

Office Hours
Wednesday 1:00pm to 3:00pm
or anytime by appt. in 489 Statler Hall

Schedule
291 Statler Hall
Tuesday/Thursday 2:55 pm to 4:10 pm

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. Log in with your net id and password and select the course.
**READINGS/MATERIALS**


Selected Readings will be 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.

Supplemental readings are made available via Blackboard as a courtesy, and are strictly for background reading. You are not responsible for these readings and they will not appear on the exam.

**COURSE REQUIREMENTS**

I. In-class Case & Reading Discussion and Attendance (15%)

II. Applied Learning Assignment(s) (35%)
   - Letter of Intent (LOI)
   - Purchase and Sale Contract (PSA)
   - Loan Quote & Term Sheet
   - Real Estate Settlement Statement
   - Real Estate Tax Case
   - Private Equity Case Study
   - Real Estate Joint Venture/Other

III. Comprehensive Final Exam (50%)

**ATTENDANCE POLICY**

Everyone will be expected to attend class regularly and to contribute in a meaningful, informed way to classroom discussions. 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

Acquisition and Assemblage

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 Private Equity – Capital Structures, Fund Sourcing & Deployment

Economic Relationships & Distributions

Real Estate Joint Ventures – Parties to the Deal

Negotiating and Structuring the Complex Real Estate Deal

Alternative Investment Strategies in Real Estate
COURSE SCHEDULE AND READINGS

I. JANUARY 22  COURSE OVERVIEW
Course Overview
Introduction to the Real Estate Transaction Process
Role of the Attorney in Real Estate Transactions

Supplemental readings/resources:

II. JANUARY 27   ACQUISITION, ASSEMBLAGE & ENTITLEMENT
Tools to Acquire Real Property

Required Readings


III. JANUARY 29  BROKERAGE AND AGENCY/SOURCING DEALS
Listing Agreements
An Earned Commission
Agency Relationships

Required Readings
Johnson, Alex M. Jr.  Broker-Vendor Agreements.  Understanding Modern Real Estate Transactions 2nd.

TRISTRAM'S LANDING, INC., ET AL V. LINDA LORING WAIT. 367 MASS. 622, 327 N.E. 2d 727
367 Mass. 622, 327 N.E. 2d 727

Legal Memo:  When a Real Estate Broker’s Commission is Due.  NYS Department of State.

Legal Memo:  Real Estate Brokers and the Unauthorized Practice of Law.  NYS Department of State.

IV. FEBRUARY 3  LETTER OF INTENT (LOI)
Preparing to Contract

Required Readings
GMH ASSOCIATES, INC. V. PRUDENTIAL REALTY GROUP. 752 A.2d 889, 2000 PA Super 59

Supplemental readings/resources:

V. FEBRUARY 5 COMMERCIAL REAL ESTATE PURCHASE AND SALE CONTRACTS
Purchase & Sale Contracts
Warranties & Representations
Drafting Issues

**Required Readings**
*Uzan v. 845 Un Limited Partnership* Supreme Court, Appellate Division, First Department, 2004. 10 App. Div. 3d 230, 778 N.Y.S.2d 171


VI. FEBRUARY 10 COMMERCIAL REAL ESTATE CONTRACTS
Drafting Issues (continued)
Breach & Remedies

**Required Readings**

*Breach of the Purchase and Sale Contract.* In Johnson, Alex M. *Understanding Modern Real Estate Transactions.* 2nd Ed. (LexisNexis 2007)

VII. FEBRUARY 12 DUE DILIGENCE
Due Diligence
Environmental Issues

**Required Readings**

**Supplemental readings/resources**

February 17 NO REGULAR CLASS MEETING – FEBRUARY BREAK
## VIII. February 19 Environmental Due Diligence/Begun Financing Real Estate - Debt

Environmental Issues
Lender’s Perspective in Real Estate Finance
Mortgage Substitutes

**Required Readings**


**Supplemental readings/resources:**

- Woroniecki on *Environmental Issues in Real Estate* (Video)


## IX. February 24 Real Estate Debt Finance

Loan Commitment

**Required Readings**


## X. February 26 Security for the Loan/Mortgage Issues

Securing the Lender Documentation

**DUE: PURCHASE CONTRACT**

**Required Readings**


- *EAGLEHEAD CORP. V. CAMBRIDGE CAPITAL GROUP* US District Court, D. Maryland (2001).
XI. MARCH 3 TITLE ISSUES & PREPARING FOR CLOSING

Conveyance
Title Insurance

**Required Readings**

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


XII. MARCH 5 THE REAL ESTATE CLOSING

Conducting the Real Estate Closing
Post-Closing matters

**Required Readings**

XIII. MARCH 10 REAL ESTATE TAX: OVERVIEW

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

**Required Readings**

XIV. MARCH 12 TAX ISSUES IN FINANCING/OWNING REAL ESTATE

Rehabilitation Tax Credit
Tax considerations in Real Estate Operations

**Required Readings**

XV. MARCH 17 TAX ISSUES IN REAL ESTATE DISPOSITIONS & TAX-DEFERRED EXCHANGES

Tax-deferred exchanges
Involuntary Conversions

**Required Readings**
March 19  NO REGULAR CLASS MEETING – NEW YORK REGIONAL MEETING

XVI. MARCH 24  THE ECONOMICS OF REAL ESTATE PRIVATE EQUITY
Introduction to Real Estate Private Equity
Private Equity Markets

**Required Readings**


XVII. MARCH 26  INTRODUCTION TO REAL ESTATE SYNDICATION & SECURITIES LAWS
DUE: TAXES
Investment Groups & Private Placement
Captive Finance

**Required Readings**

Readings to be distributed prior to class

March 31/APRIL 2  SPRING BREAK – NO CLASS SCHEDULED

XIII. APRIL 7  FUND STRUCTURES, DEAL TERMS, FEES, AND FUND GOVERNANCE
Adjudicating the Risk Exposures from LP Perspective
The Cash Flow Waterfall

**Required Readings**


XIX. APRIL 9  **FUND RAISING PROCESS: CAPITAL SOURCES & STRATEGY**

The Private Equity Fund Raising Process  
Target Returns & Investment Profiles  
Private Placement

**Required Readings**
Yale University Investments Office (2011).

6 pp.

XX. APRIL 14  **STRUCTURING THE REAL ESTATE VENTURE**

Why Joint Ventures For Real Estate  
The Term Sheet & Due Diligence  
Crafting the Capital Structure  
The Risk Assessment

**Required Readings**  
Readings to be distributed prior to class

XXI. APRIL 16  **NEGOTIATION, DUE DILIGENCE, AND MANAGING THE VENTURE CAPITAL**

Managing The Venture Partnership  
Fund Control & Cash Management  
Administration & Reporting  
Exposure Risk

**Required Readings**
33-36

XXII. APRIL 21  **EXIT STRATEGIES AND SECONDARY INTERESTS**  
DUE: PRIVATE EQUITY CASE

Understanding Secondary Interests in Real Estate

**Required Readings**
Carey, Stevens. *Real Estate JV Buy/Sell Agreements: A Brief Review and Critique.*  
5-12

XXIII. APRIL 23  **CROWDFUNDING**

New & Alternative Capital Sources

**Required Readings**  
Readings to be distributed prior to class
XXIV. APRIL 28  RETIREMENT FUNDS/IRA INVESTING AND REAL ESTATE

**Required Readings**

**Pages**
4 pp.

XXV. APRIL 30  ALTERNATIVE REAL ESTATE INVESTMENT AND DEAL STRUCTURES

The Investment Committee Process
The Deal Champion
Final Decision Making
Individual Retirement Accounts
EB-5

**Required Readings**
Readings to be distributed prior to class

XXVI. MAY 5  REVIEW FOR FINAL EXAM  DUE: JOINT VENTURE

Putting It All Together
A Command of The Key Components
The Art & Science of Successful Deal Making

END OF SEMESTER

Final Exam Schedule
TBA by University after February 14th