

LAND TRANSACTIONS, FINANCE & DEVELOPMENT

Spring 2018

Tuesdays and Thursdays 2:10 to 3:25 p.m.
Oakes 208

Marc Mihaly

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Description

This introductory land use course, a companion to Land Use Regulation, provides an understanding of the real estate market, its 2008 breakdown, and provides essential knowledge for employment as a land use regulator, land trust attorney or project manager, developer, or environmental advocate in the land use arena.

The course covers the private side of land use: how land is surveyed and divided, the dynamics at play as around the conveyance, from the initial contract to the final execution. The course examines land and development finance in some detail, as well the development process. At every stage in the process, we examine the roles of attorney, realtor, developer, lender, equity investor, architect, engineer, planner, regulator, and others involved in the effort to create our built environment.

Texts

The texts are:

- George Lefcoe's multidisciplinary text, REAL ESTATE TRANSACTIONS, Sixth Edition, LexisNexis, 2009, cited in this syllabus as "*Lefcoe*." This text, addressing a practical area, generally uses problems rather than cases. We will cover many of the problems in class. It's available in bound and loose-leaf form at the bookstore.
- A course pack with excerpts from Miles *et al*, REAL ESTATE DEVELOPMENT: PRINCIPLES AND PROCESS, Urban Land Institute. This is the 4th edition from 2009, superior in my view to the latest 5th edition. This work is cited as "*ULI Development*" with the applicable chapter and page numbers.

- I've asked the bookstore to stock a few copies of Hamilton and Booth, *Business Basics for Law Students*, Aspen, 2006. It isn't required for the course, but it's straightforward, accessible, and will help you in various courses as well as this one.

Requirements

- Read the materials and participate in class. Class participation accounts for part of the grade in the class.
- Complete problem sets during the term. These allow you to synthesize and apply what you're learning from the reading and class. We'll go over the problems in class.
- Complete a final take-home exam or write an AWR.

Introduction

Class 1 (Tuesday, January 9). History of Land Disposition and Development. This class examines the history of land development in the United States through World War II. This essential background serves to introduce the precursors of the modern built environment in which we live.

- *ULI Development*, Ch. 4: "The Colonial Period to the Late 1800's"
- *ULI Development*, Ch. 5: "The Late 1800's to World War II"

Total: 45 pages

Class 2 (Thursday, January 11). Modern History, the Players and Introduction to Buying & Selling. This class brings the history up to the present time, and introduces students to the actors in the development process.

- *ULI Development*, Ch. 6: "Post- WW II to the Present"
- *ULI Development*, Ch. 3: "Developers and Their Partners," but just pp. 39-53. We'll cover the other players in this chapter later in the class.
- *Lefcoe*, Ch. 1: "Buying and Selling Real Estate in the United States," pp. 1-7. (Real Estate Sales, Useful Definitions)

Total: 47 pages

Creation of Marketable Plots of Land

Class 3 (Tuesday, January 16). Surveys and Land Description. This first “nuts & bolts” class provides basic information on the creation of marketable parcels of land in the United States, essential information for anyone working in land use. Read *Lefcoe* Ch. 18 slowly and carefully.

- *Lefcoe*, Ch. 18: “Surveys, Land Descriptions and Boundary Disputes”
- *Lefcoe*, Ch. 33: “Obtaining Entitlements...,” pp. 805-808 (Subdivision Map Act, Parts A and B)

Total: 29 pages

Class 4 (Thursday, January 18). Title and Deed. Essential information for attorneys and other actors in the land use game, we examine here the dysfunctional, but prevalent, system for recording title, and for creating attorney’s opinions or title insurance addressing title validity. Review for those of you who had it in Property, new for others and requires careful reading.

Lefcoe, Ch. 14: “The Recording Acts”

- pp. 243-254 (Introduction and System of Public Land Records)
- pp. 261-263 (III. Notice, race-notice and race compared)
- pp. 265-267 (Doctrine of Shelter)
- pp. 278-279 (Wild Deeds)

Lefcoe, Ch. 17: “The Deed,” 335-346 (I. Deed Formalities)

Total: 28 pages

Class 5 (Tuesday, January 23). Title Insurance. Title insurance has largely (but not entirely—see Vermont, for example) replaced attorney title opinions as the method to provide confidence in the land deeds sold and bought in the typical real estate transaction. Here we learn the basics of how title insurance functions.

- *Lefcoe*, Ch. 15: “Title Insurance”

Total: 21 pages

The Basic Land Transaction from Site Control to Closing: The Purchase and Sale Agreement, Deed & Closing Process

Class 6 (Thursday, January 25). The Purchase and Sale Agreement: Statute of Frauds and Parties. Written purchase and sale agreements (“P&S Agreements”) dominate the initial real estate transaction with pre-printed offer/acceptance forms in the residential market and more elaborate contracts in the commercial setting.

- *Lefcoe*, Ch. 4: “Purchase-and-Sale Agreements: Statute of Frauds and Parties to the Agreement”
- *Lefcoe*, Ch. 5: “Purchase-and-Sale Agreements: Following the Money”

Total: 39 pages

Class 7 (Tuesday, January 30). Purchase and Sale Agreement: The Subject Property. This class delves further into how the agreement addresses the subject property.

- *Lefcoe*, Ch. 6: “The Subject Property”

Total: 21 pages

Class 8 (Thursday, February 1). Purchase and Sale Agreement: The Quality of Title, Performance, Doctrine of Merger, and Termination. The agreement has to contain mechanisms to ensure the quality of the title to be passed. Once escrow closes, the purchase and sale agreement is superceded by (i.e., “merged” into) the deed. When the seller or buyer backs out, the remedies are special and important.

- *Lefcoe*, Ch. 7: “The Quality of Seller’s Title”
- *Lefcoe*, Ch. 8: “Contract Provisions Regarding the Time for Performance and the Presumption of Merger”
- *Lefcoe*, Ch. 9: “Terminating, Real Estate Contracts”

Total: 35 pages

Class 9 (Tuesday, February 6). Closing the Deal. Escrow and closing bring it all together.

- *Lefcoe*, Ch. 16: “Real Estate Closing and Escrows”
- *Lefcoe*, Ch. 17: “The Deed,” pp. 346-359.

Total: 33 pages

Basic Real Estate Finance

Class 10 (Thursday, February 8). The Institutional Setting. We start with the sources and flows of capital in the United States, and learn the major financial players on both the lending (debt) and ownership (equity) sides.

- *ULI Development*, Ch. 7: “Real Estate Finance: Background,” pp. 156-175 (“Capital Markets” and “The Real Estate Finance Cycle”).
- *ULI Development*, Ch. 19: “Stages Four and Five: Contract Negotiation and Formal Commitment,” pp. 450-458 (Arranging Financing: The Construction Lender, The Permanent Lender, The Mezzanine Lender, Sources, and The Common Thread).
- I’ll hand out the second exercise.

Total: 27 pages

Class 11 (Tuesday, February 13). Real Estate Finance 1. This class and the next two introduce you to concepts that dominate the lives of anyone involved with land use efforts, whether representing project developers, lenders, government partners or regulators, project opponents, or groups with specific interests such as low income housing, habitat preservation, transportation, etc. Topics include net operating income, debt service ratios and related measures, net present value, discounted cash flow, internal rate of return, residual value, and the project financial performance projection spreadsheet, known in the business as the “pro forma.” A basic working knowledge of these concepts provides an essential tool for anyone concerned with the modern land use endeavor. Most everyone in the real estate world comes to understand these concepts, but initially this is difficult material to learn, especially if you have no economic or finance background. We’ll go over it in class. Read slowly, thinking through each paragraph and table.

- *Lefcoe*, Ch. 27: “Methods of Financial Analysis for Real Estate Investment,” pp. 591-606.
- The second exercise is due.
- We will hand out the drafting exercise seller and buyer facts and instructions.

Total: 15 difficult pages

Class 12 (Thursday, February 15). Real Estate Finance 2. The rest of the finance chapter plus a very brief introduction to tax matters in real estate. Study carefully the pro forma at the end of Chapter 27.

- *Lefcoe*, Ch. 27: “Methods of Financial Analysis for Real Estate Investments,” pp. 606-620.
- *Lefcoe*, Ch. 28: “Tax Matters in Real Estate,” pp. 623-top of 628.

Total: 20 difficult pages

Class 13 (Tuesday, February 20). Real Estate Finance 3

- *ULI Development*, Ch. 8: “Real Estate Finance: The Logic Behind Real Estate Financing Decisions,” pp. 177-186 (up to and not including “Returns to Equity Investors”).
- *ULI Development*, Ch. 9: “Discounted Cash Flow: The Equity Perspective in More Detail,” including discounted cash flow analysis, and determining a discount rate. pp. 203-207 (to end of the page); pp. 212-213 (Gateway Business Center case study described); and its pro forma “Gateway Business Center: leveraged Property Analysis. pp. 224-227 (Figure 9-14).
- *ULI Development*, Ch. 13: “The Roles of the Public Sector,” pp. 314-320 (Public/Private Roles in Planning and Financing Infrastructure—Public capital, Impact Fees, Special Taxing Districts, Privatization, and the Illinois TIF example at Figure 13-9).
- The drafting exercise seller and buyer offers are due.

Total for the reading: 24 difficult pages

Real Estate Finance: The Classic Mortgage**Class 14 (Thursday, February 22). The Residential Mortgage: An Introduction.**

The mortgage is the oldest, traditional, and most pervasive form of financing for acquisition of both land and improvements, as well as the development of improvements. In this and the following seven classes, we examine the concept in some detail. This is the core of the traditional real estate course since attorneys drafted these documents, and still review them, and in the commercial context, author the principle documents. This class begins with the simplest mortgage, the residential version.

- *Lefcoe*, Ch. 10: “Residential Mortgage Lending”
- We will assign buyer and seller groups to each other for negotiation. You will have until March 15 to negotiate a final P&S Agreement or produce a Failure Memorandum, and submit the same at the start of the class.

Total: 27 pages

Class 15 (Tuesday, February 27). The Commercial Mortgage. An introduction to commercial lending, and prevalent, if more sophisticated terms and concepts.

- *Lefcoe*, Ch. 11: “Commercial Mortgage Lending”

Total: 10 pages

Class 16 (Thursday, March 1). Mortgage Prepayment.

- *Lefcoe*, Ch. 12: “Prepayment of Mortgage Loans”

Total: 13 pages

Spring Recess, March 3-11

Class 17. (Tuesday, March 13). Selling Mortgages and Notes.

- *Lefcoe*, Ch. 13: “When the Borrower Sells or Pledges Mortgaged Property”

Total: 15 pages

Class 18. (Thursday, March 15). Allocation of Risk between the Mortgagor and the Mortgagee (lender) and Lessee Status as the Landlord Gets in Trouble.

- *Lefcoe*, Ch. 19: “The Mortgagee’s Interest in the Security Property”
- *Lefcoe*, Ch. 20: Section IV: “Lessee’s Status Following Landlord’s Mortgage Default and Foreclosure,” pp. 420-426.
- *Due Today: Negotiated P&S Agreement or discussion of reasons for failure to agree.*

Total: 23 pages

Class 19. (Tuesday, March 20). Foreclosure. Here’s how it ends when owners cease to pay the mortgage and the mortgagee elects to terminate. Many aspects of the original purchase and sale contract and the earlier relationship reflect “What If’s” that relate to foreclosure.

- *Lefcoe*, Ch. 21: “Mortgage Foreclosure”

Total: 31 pages

Class 20. (Thursday, March 22). Allocating Leftovers and Anti-deficiency Protection.

- *Lefcoe*, Ch. 22: “Allocating Foreclosure Sale Proceeds and Understanding Anti-Deficiency Legislation”

Total: 14 pages

Class 21. (Tuesday, March 27). Alternatives to Foreclosure; “Workouts.” This is the most frequent approach when commercial mortgagees get into trouble.

- *Lefcoe*, Ch. 23: “Alternatives to Foreclosure: Workouts and Deeds in Lieu of Foreclosure”
- Review of the P&S Agreement Negotiation; Two groups will present.

Total: 12 pages

Commercial Finance

Class 22. (Thursday, March 29). Development Financing 1. In this and the following two classes we learn the basics of how everyone in the business analyzes real estate transactions, whether as proponents, opponents, regulators, or land trust officials. This class examines the basics of development financing, construction loans, and construction lender’s risk management

- *Lefcoe*, Ch. 24: “Development and Construction Financing.”
- Exercise 4 (financing exercise) handed out.

Total: 26 pages

Class 23. (Tuesday, April 3). Development Financing 2. Here we examine now prevalent alternatives to the classic mortgage including the reverse mortgage, price adjusted, shared appreciation, convertible, and wraparound mortgages, as well as installment sale contracts, equity sharing, and mezzanine financing.

- *Lefcoe*, Ch. 30: “Alternatives to the ‘Plain Vanilla’ Mortgage”
- Exercise 4 (financing exercise) due.

Total 30 pages

Class 24 (Thursday, April 5). Development Financing 3. This class examines the now common use of ground leasing and the sale/leaseback.

Lefcoe, Ch. 31: “The Lease as Financing Device”. Read 725-top 735; 737-738 [(f) + 2(a), (b) and (c); 740 F to 742 (Subleases) and II. “Sale Leaseback,” but pp. 741-2 (Part A) only.

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Total: 22 pages

A Brief Overview of Development

Class 25 (Tuesday, April 10). A Quick Review of Modern Regulation. Some of you have studied some of this modern regulatory repertoire, so this may be review of the contemporary regulator's options for addressing development.

- *Lefcoe*, Ch. 33: "Obtaining Entitlements for Real Estate Development," pp. 810-842 (modern zoning, master plans, vested rights).

Total: 32 pages

Class 26 (Thursday, April 12). The Development Process 1. This and the next class develop in some detail how modern development works, who are the characters involved, and what are their respective interests. We focus here primarily on so called "vertical development"—that is building the use. The lessons here pertain whether the use is residential, commercial or industrial. We may have a guest developer, a low income housing advocate present a case in this or the next class.

- *Lefcoe*, Ch. 32: "Commercial Leasing," pp. 751-774 (From II "Parties to the Lease" through V B ("Percentage Rent Formulas")).
- *Lefcoe*, Ch. 25: "Construction Contracts," pp. 541-557 (From III "Owner-General Contractor Agreement" through end of chapter).

Total: 39 pages

Class 27 (Tuesday, April 17). The Development Process 2.

- *ULI Development*, Ch 19: "Stages Four and Five: Contract Negotiation and Formal Commitment," pp. 465-485 (Decisions about Design and Contractors, Checklist for Construction Contracts; Bidding vs. Negotiation: Fixed Prices vs. Cost Plus; Fast Tack Construction; Bonding; Decisions about Major Tenants; Decisions about Equity; The Government as Partner; Commitment, Signing Contracts, and Initiating Construction).
- *ULI Development*, Ch 21: "Stage Eight: Property, Asset, and Portfolio Management," pp. 507-531.

Total: 45 pages

Class 28 (Thursday, April 19). Review.