

SYLLABUS

Law 257 - REAL ESTATE TRANSACTIONS AND LITIGATION

- I. COURSE OVERVIEW/INTRODUCTION (August 27)**
- II. REAL ESTATE BROKERS AND SALES AGENTS (August 27; September 3)**
 - A. INTRODUCTION**
 - B. SOURCES OF RELEVANT LAW**
 - C. SELECTED CALIFORNIA STATUTORY AND REGULATORY MATERIALS CONCERNING BROKER LICENSING, DISCIPLINE AND RECOVERIES**
 - D. FUNCTIONS PERFORMED BY REAL ESTATE BROKERS**
 - 1. Mortgage Brokers**
 - E. THE CONTRACT BETWEEN BROKER AND CLIENT**
 - F. BROKERS AND THE STATUTE OF FRAUDS**
 - G. WHEN HAS THE BROKER EARNED HER COMMISSION?**
 - H. THE WITHDRAWAL FROM SALE CLAUSE**
 - I. BROKER DUTIES OF INVESTIGATION AND DISCLOSURE**
 - J. AGENCY, DUAL AGENCY AND AGENCY DISCLOSURE**
 - K. CONSEQUENCES OF FAILING TO DISCLOSE A DUAL AGENCY**
- III. REAL ESTATE SALES CONTRACTS AND COMMERCIAL LEASES (September 10; 17)**
 - A. GENERAL DISCUSSION.**
 - 1. Real Property as Unique**
 - 2. Unusually Long “Executory” Period**
 - 3. Relationship to Escrow**
 - 4. The Relationship Between the Contract and the Deed**

- 5. Title Issues**
- B. THE “DEPOSIT RECEIPT”**
- C. COMMERCIAL REAL ESTATE TRANSACTIONS**
- D. CONTRACT FORMATION; LETTERS OF INTENT; GOOD FAITH; AND RESTRAINTS ON ALIENATION**
- E. OPTIONS: THEIR CHARACTERISTICS AND RELATIONSHIP TO BILATERAL MARKETING CONTRACTS**
- F. COMMERCIAL LEASING: LIMITS ON THE IMPLIED COVENANTS OF GOOD FAITH AND THE MODERN COMMERCIAL LAW DOCTRINE OF UNCONSCIONABILITY**
- G. ESTOPPEL CERTIFICATES AND OTHER ECHOS OF PLAYGROUND JUSTICE**
- H. GROUND LEASES, ASSUMPTIONS AND THE IMPACT OF FORECLOSURE**
- I. FINANCING**
 - 1. Types and Purpose of Financing Agreements**
 - a. Promissory Notes**
 - b. Deeds of Trust/Mortgages**
 - i. Role of Trustee**
 - c. Assignment of Rents and Profits**
 - d. Guaranties**
 - i. Suretyship Generally**
 - ii. The Use of Guaranties in California Mortgage and Trust Deed Transactions**
 - iii. Waivers of Suretyship Defenses and the Implications in California Trust Deed Transactions**
 - 2. Consequences of Real Estate Security**
 - a. What Is A Secured Transaction?**
 - i. Historical Context**

- ii. Mortgages and “Trust Deeds”
 - iii. Common Features of Secured Transactions: The Essential Two Part Structure
 - b. Advantages And Disadvantages Of Secured Transactions
 - i. The Logic Of The Two-Edged Sword
 - c. Waivers
 - d. Hidden Security Interests
 - e. Complex Security Situations
 - i. Freedom of Contract Concerning The Extent Of The Security
 - ii. Variations on the Complex Security Theme
 - iii. Risks and Benefits of Multiple Security
 - iv. Other Issues Posed By Multiple Security
 - f. Mixed Collateral Issues
 - i. Terminology
 - ii. Mixed Collateral Transactions, Real and Pseudo
 - iii. A Short History of Mixed Collateral in California
- 3. Obligation Issues
 - a. Acceleration
 - b. Restraints On Alienation
 - c. Due On Sale Clauses
 - d. Prepayment “Penalties”
 - e. Late Charges
 - f. Penalties
 - g. Adjustable Rate Loans
 - h. Tender

- i. Impounds**
- j. Attorneys Fees**

4. Existing Financing Options

- a. Payoff**
- b. Assumption**
- c. “Subject To”**

J. CONDITIONS AND CONTINGENCIES IN EXECUTORY MARKETING CONTRACTS

K. TITLE TO BE CONVEYED AND THE IMPLIED COVENANT OF MARKETABLE TITLE

L. THE MERGER DOCTRINE

M. WARRANTIES OF QUALITY IN THE SALE OF LAND AND THE “AS IS” CLAUSE

IV. DEEDS, CONVEYANCING, EASEMENTS AND “CC&RS” (September 24)

A. GENERAL CALIFORNIA STATUTORY MATERIALS REGARDING DEEDS AND CONVEYANCING

B. THE NATURE AND ELEMENTS OF A VALID DEED

C. TYPES OF DEEDS

- 1. Grant Deed**
- 2. Warranty Deed**
- 3. Quitclaim Deed**
- 4. Deed of Trust**

D. PARTS OF DEEDS

E. OTHER DEED FORMALITIES NOT ESSENTIAL TO VALIDITY

F. THE EFFECT OF ALTERING DEEDS AFTER EXECUTION

G. SAMPLE DEED

H. THE INTERPRETATION OF DEEDS AND MARKETABLE TITLE ACT

- I. THE AFTER-ACQUIRED TITLE DOCTRINE**
- J. DELIVERY**
- K. CLASSIC DELIVERY ISSUES**
- L. DELIVERY THROUGH A THIRD PARTY –AN INTRODUCTION TO ESCROWS**
- M. DEED COVENANTS AND “CC&Rs”**
- V. ESCROWS (October 1; 8)**
 - A. NATURE AND TYPES OF REAL ESTATE ESCROWS**
 - 1. Purchase and Sale**
 - a. Sub-Escrows**
 - 2. Financing**
 - B. ESCROW INSTRUCTIONS**
 - C. THE REQUIREMENT OF UNAMBIGUOUS INSTRUCTIONS**
 - D. ESCROW HOLDER DUTIES AND LIABILITIES: ARE ESCROW HOLDERS THE “POLICE” OF THE REAL ESTATE MARKETPLACE?**
 - E. PREMATURE OR PROPOSED CLOSINGS**
 - F. THE IMPUTATION OF KNOWLEDGE AND OTHER AGENCY ISSUES**
 - G. ESCROW AS A SOCIAL AND ECONOMIC INSTITUTION AND THE POWER OF “THE FLOAT”**
 - H. FEDERAL REGULATION OF ESCROWS AND “SETTLEMENTS”**
- VI. PRIORITIES AND THE RECORDING ACTS (October 15; 22)**
 - A. SPECIAL STATUTORY PRIORITIES AND EXAMPLES, INCLUDING PURCHASE MONEY PRIORITY, VENDOR’S LIENS, THE HOMESTEAD EXEMPTION AND MECHANIC’S LIENS**
 - B. PRIORITY BY EXPRESS OR IMPLIED AGREEMENT: SUBORDINATION AND “AUTOMATIC SUBORDINATION”**
 - C. THE MECHANICS OF RECORDATION**

- D. PROTECTING THE PRIORITY OF A DISPUTED CLAIM THROUGH THE RECORDING OF A NOTICE OF PENDENCY OF ACTION (LIS PENDENS)**
- E. ABUSE OF THE RECORDATION PROCESS**
- F. THE RECORDING ACTS—PROTECTING THE BONA FIDE PURCHASERS AND ENCUMBRANCERS**
- G. CHAINS OF TITLE**
- H. INQUIRY NOTICE**
- I. THE IMPACT OF FORECLOSURE AND THE EXTINGUISHMENT OR “WIPING OUT” OF JUNIOR INTERESTS**
- VII. TITLE INSURANCE (October 22; 29)**
 - A. THE TITLE INSURANCE INDUSTRY**
 - B. THE NATURE AND PURPOSE OF TITLE INSURANCE**
 - C. THE TITLE INSURANCE POLICY: FUNDAMENTAL SOURCE OF RIGHTS AND DUTIES OF BOTH THE INSURER AND THE INSURED**
 - 1. Owner Policies**
 - 2. Lender Policies**
 - D. INSURING TITLE CONTRASTED WITH TITLE ABSTRACTING**
 - E. PRELIMINARY TITLE REPORTS (“PRELIMS”)**
 - F. MISCONDUCT BY THE INSURED**
 - G. CONSTRUING TITLE INSURANCE POLICIES**
 - H. THE CLAIMS PROCESS AND THE NATURE OF COVERED LOSSES**
 - I. TIME LIMITATIONS**
 - J. KEEPING UP WITH CURRENT EVENTS**

VIII. ENFORCEMENT OF REAL PROPERTY CONTRACTS (November 5; 19)

A. BREACH OF PURCHASE AND SALE AGREEMENTS

- 1. Real Estate Remedies, Specific Performance, And “The Mutualities”**
- 2. Alternative Dispute Resolution Forums – Arbitration, Mediation And Judicial Reference Clauses**
- 3. Recovery Of Attorneys’ Fees**

B. PERFORMANCE ISSUES RELATED TO FINANCING

- 1. Beneficiary Demands**
- 2. Reconveyance**

C. BREACH OF FINANCING CONTRACTS

- 1. Code of Civil Procedure Section 726**
 - a. A Review of the Three Key Prohibitions of Section 726(a)**
 - b. The “Pleading” and “Sanction” Aspects of Section 726(a) Legitimized Sandbagging?**
 - c. Post Judgment Violations It Is Never Safe To Stay From The Well-Trodden Path**
 - d. Playing “Ditch the Security”**
 - e. Playing “Duck and Cover” with a Senior Foreclosure**
 - f. “Wozab” Letters and Why You Might Need To Write One**
 - g. Prejudgment Attachment A Very Risk Business**
 - h. The “Goose Egg” Problem**
- 2. Types of Foreclosure**
 - a. Non-Judicial Foreclosure Process And Issues**
 - i. Notice Of Default**
 - ii. Notice Of Trustee’s Sale**
 - iii. Postponements**

- iv. **Trustee’s Sale**
 - v. **Trustee’s Deed**
 - b. **Judicial Foreclosure Process And Issues**
 - i. **Obtaining a Deficiency Judgment**
 - ii. **Post-Sale Redemption**
- 3. **Enforcement of Guaranties**
 - a. **Possible Direct Protection for Guarantors of Real Estate Secured Debts**
 - b. **The “*Gradsky*” Case and Doctrine**
 - c. **“*Gradsky*” Waivers**
 - d. ***Mariners* Letters**
 - e. **Fair Value Protection for Guarantors?**
 - f. **The “Sham Guaranty” Defense**
- 4. **Antideficiency Protections**
 - a. **Fair Value – Code of Civil Procedure Sections 580a and 726(b)**
 - i. **Fair Value and Fair Market Value Defined**
 - ii. **No “Parallel Universe” Appraisals**
 - iii. **Fair Value Hearings**
 - iv. **The Three Month Limitations Period**
 - v. **Reports of the Death of Section 580a Have Been Greatly Exaggerated**
 - vi. **Section 580a and the Purchasing Junior Creditor**
 - b. **Purchase Money – Code of Civil Procedure Section 580b**
 - i. **Is The Policy Basis For Section 580b, As Articulated in the Case Law, Really So Implausible?**
 - ii. **Contractual Waivers**

- iii. **How To Structure a Transaction in Order to Avoid the Purchase Money Antideficiency Rule**
- iv. **Non-Standard” Purchase Money Transactions**
- v. **Can Purchase Money Be Lost Through Structural Changes?**
- vi. **Mutant Transactions**
- vii. **“Virtual” Deficiency Judgments**
- viii. **Attorney Malpractice**
- c. **Code of Civil Procedure Section 580d**
- 5. **Full Credit Bid**
- 6. **Receivership**
- 7. **Deeds in Lieu of Foreclosure**
 - a. **Deed-in-Lieu Mechanics**
 - b. **Are Deeds in Lieu Illegitimate, and Do They Involve Illicit and Unenforceable Waivers?**
 - c. **Deeds in Lieu of What?**
 - d. **Deed in Lieu Priority Issues**
 - e. **A Recipe for Successful Deed in Lieu Transactions**
- 8. **Foreclosure Mechanics/Bidding Strategy**

IX. IN CLASS REVIEW SESSION (November 26)