

Fried Frank Real Estate Law Fundamentals

Legal Elements of the Development Process

Fall 2014 Syllabus

This course will introduce real estate development students to the legal aspects of the development process. The sequencing follows the sequence of a development transaction. The instructors will be members of the Real Estate Department at Fried, Frank, Harris, Shriver & Jacobson LLP, who will, in many instances, use case studies as the basis for their presentations. Course materials will be made available on line at least one week prior to each class.

- **Class Number 1: Pre-Acquisition Due Diligence – September 3**

Description: This class will provide an overview of the first steps in the development process. It will focus on assembling the proper development team, *i.e.*, attorneys, consultants, architects, assemblages of property and initial review of financial, land use, environmental and tenant issues.

Instructor: Richard G. Leland

Materials: To Come

- **Classes Number 2, 3 and 4: Structuring the Development Entity and Tax Considerations – September 10, 17 and 24**

Description: This class will focus on the legal structures usually used for a development company (corporations, general and limited partnerships, limited liability companies) and discuss some of the benefits of using different organizational structures, such as limiting exposure to potential liabilities and the interaction between entity types and tax treatment, dealing with co-developers, equity finance sources and other partners, company governance, exiting the company, and the inter-connection with financing the development. The class will also discuss various ways a developer can be compensated for development expertise.

Instructors: Lee S. Parks, Fiona Kelly and Brian Kniesly

Materials: Outline and comparison of entity types, example joint venture term sheets, sample joint venture agreements, joint venture checklist and other sample agreements.

- **Class Number 5: Securing Rights to the Property – October 1**

Description: This class will cover the legal aspects of purchasing the real property interest in a development site. It will include a discussion of the material provisions of a purchase and sale agreement, including representations and warranties, and conditions to the parties' obligations, with particular attention to those issues which might arise in an acquisition of vacant land. The class will also address in a general matter the concept of title insurance and other aspects of legal due diligence which is dealt with in the context of the negotiation and execution of a purchase and sale agreement.

Instructor: Robert Sorin

Materials: Outline and specimen documents.

- **Class Number 6: Leases – October 8**

Description: This class will cover the material provisions of two types of leases: A ground lease and a typical space lease. Emphasis will be placed on those aspects of a lease which are important to all stakeholders in a real estate development in addition to the landlord and tenant, such as lenders and other superior interest holders. It will focus on the provisions of a lease which can be used to explain to students the hierarchy inherent in the ownership of all real estate, and the issues which the stakeholders at various positions of superiority or subordination in that hierarchy have vis a vis the other stakeholders, including landlords and tenants.

Instructor: Robert Sorin

Materials: Outline and specimen documents

- **Class Number 7: Financing – October 15**

Description: This class will examine certain of the legal, underwriting and structural issues unique to debt financing of a private commercial development project. Topics covered will include: the lender's construction diligence, underwriting and exit strategy (with focus on the unique risks of lending to a project with no in-place income); the development budget; required equity (upfront equity and requirement to keep the loan "in balance"); completion guaranties, carry cost guaranties and other recourse to creditworthy sponsor; the multi-draw structure of a construction loan, monthly advances and typical conditions to loan advances (including special conditions to initial and final advances); the lender's construction consultant; leasing parameters (and, for condominium projects, minimum unit sale prices); project completion, stabilization and permanent financing.

Instructor: Michael Barker

Materials: Specimen construction financing term sheets, sample credit agreement and other loan document provisions, sample construction loan closing checklist.

- **Class Number 8: Distressed Debt and Workouts – October 29**

Description: This class will discuss strategies and experiences in dealing with situations where development properties have gone “under water” and how debt can be restructured and worked out. It will cover foreclosures, restructuring and other creative means of keeping transactions and projects alive.

Instructors: Janice Mac Avoy

Materials: To Come

Class Number 9: Bankruptcy – November 5

Description: An introduction to the federal bankruptcy laws and the impact such laws have upon commercial real estate ownership, development and finance. The class will provide a general overview of federal bankruptcy protection, including the purpose and policies underlying the United States Bankruptcy Code, and the rights and remedies available to a debtor in bankruptcy and its creditors. The class will also provide an overview of issues that arise when a party to a commercial real estate transaction becomes insolvent, including the treatment of contracts and leases and the rights of mortgage lenders.

Instructor: Jennifer L. Rodburg

Materials: To Come

Class Number 10: Public/Private Partnerships – November 12

Description: This class will examine the structures through which the public and private sectors carry out joint development projects in New York City, how their sometimes divergent goals and interests are accommodated, and the resources that each brings to the partnership. Topics to be discussed will include: land acquisition/site assemblage, public approvals, financing, tax incentives and other public subsidies, public policy considerations.

Instructor: Tal Golomb

Materials: These will include selected materials from the joint public/private development projects such as: the New Yankee Stadium, Atlantic Yards (Barclays Center) in Brooklyn, and the Long Island Rail Road yards on the West Side of Manhattan.

- **Class Number 11: Land Use Approvals – November 19**

Description: This class will provide an overview of the fundamentals of zoning in New York City and will consider how zoning and other land use regulations affect and inform developer's decisions. Topics to be covered will include "as of right" zoning, development right transactions, landmarks, and discretionary land use approvals. Case studies will be provided.

Instructor: David Karnovsky and Carol Rosenthal

Materials: Materials will include selected provisions of the New York City Zoning Resolution and the New York City Charter, and a power point presentation.

- **Class Number 12: Environmental Review – November 26**

Description: This class will discuss the environmental review process under both state and federal laws, focusing on the National Environmental Policy Act, the New York State Environmental Quality Review Act and statutes involving related topics such as historic preservation, wetlands regulations and waterfront initiatives. Case studies will include the Columbia University Manhattanville and Moynihan Station projects.

Instructor: Richard G. Leland

Materials: This will include an outline describing SEQRA, copies of scoping documents for Moynihan Station and Manhattanville, a Power Point presentation and several form documents.

- **Class Number 13: Historic Preservation – December 3**

Description: This class will discuss a variety of City, State and Federal programs historic resources as part of the development process.

Instructor: Rick Leland

Materials: To Come