

COURSE SYLLABUS  
**REAL ESTATE TRANSACTIONS LAW**  
SPRING 2017  
PLAN6332  
1.5 CREDITS

Tuesdays, 9-11 am, 200 South Fayerweather  
[\*\*note that Class 1 on Jan. 17 will be rescheduled\*\*]

**Instructor:** Robert Wertheimer and Nathalia Bernardo

Contact information:

[robertwertheimer@paulhastings.com](mailto:robertwertheimer@paulhastings.com); 212-318-6550

[nathaliabernardo@paulhastings.com](mailto:nathaliabernardo@paulhastings.com); 212-318-6306

## **I. COURSE DESCRIPTION**

The primary objective of this course is to provide you with an understanding of how real estate transactions are structured, negotiated and documented. You will learn to analyze and evaluate customary commercial real estate transactional agreements, such as purchase and sale contracts and cross-indemnity, development and joint venture agreements, with particular attention given to the give and take involved in negotiating these documents and their business rationale. While emphasis will be on the agreements themselves, the course will deal with negotiation paradigms, attorney-client relations and ethical concerns as well.

Our goal is to provide you with a “big picture” understanding of real estate transactional business goals, considerations of strategy and tactics, and how lawyers are involved in the process. By the end of the semester, we hope you will walk away with sufficient knowledge to ask insightful questions on how deals are structured and why some close and some don’t.

## **II. COURSE REQUIREMENTS AND ASSIGNMENTS**

Class participation is a significant component of this course. Truly, your learning, and the learning of the others in the class, will be positively affected by your interest, effort and quality of class contribution. You should be prepared to discuss assigned readings and you should be prepared to interact with us and with other students to offer alternative perspectives and stimulate meaningful interaction, which is (we think) the best way to learn.

Quality contributions to the classroom are important. Examples of good contributions include starting a class discussion with a good overview of the problems at hand, asking questions and posing hypotheticals to further explore the topics we are discussing, synthesizing and summarizing class discussions, constructively criticizing and adding to the contributions of

others, sharing relevant experiences with the class and responding effectively to the ideas of others.

The final exam will be a 90 minute in-class short answer test of approximately 40-45 questions. It will be closed book. All of the answers can be derived from our classroom discussions.

### III. COURSE GRADING CRITERIA

Course grades will be determined based on each student's performance on the final exam.

Only exceptional performers will receive a High Pass.

### IV. COURSE OUTLINE

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| Class 1 | <p>Introduction</p> <ul style="list-style-type: none"><li>• Introduction of Professors</li><li>• Structure of a Transaction (identifying the various parties involved in real estate transactions and their relative risk/reward profiles)</li></ul> <p>Purchase and Sale Agreement</p> <ul style="list-style-type: none"><li>• Purchase Price; Deposit; Escrow</li><li>• Condition of Title</li><li>• Existing Loans (repayment vs. assumption)</li><li>• Apportionments</li></ul> |
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| <p>Class 2</p> | <p>Purchase and Sale Agreement</p> <ul style="list-style-type: none"> <li>• Closing Deliveries; Conditions to Closing</li> <li>• Estoppel Certificates</li> <li>• Right of Inspection; Access</li> <li>• Title Insurance</li> <li>• Seller/Purchaser Defaults</li> <li>• Representations and Warranties</li> <li>• Condemnation and Casualty</li> <li>• Seller Covenants (between signing and closing)</li> </ul>   |
| <p>Class 3</p> | <p>Purchase and Sale Agreement</p> <ul style="list-style-type: none"> <li>• Transfer Taxes</li> <li>• Tax Certiorari Proceedings</li> <li>• Union Agreements and Employment Matters</li> <li>• Recording/Memorandum of Contract</li> <li>• 1031 Exchange</li> </ul> <p>Joint Venture Agreement</p> <ul style="list-style-type: none"> <li>• Limitation on Liability</li> <li>• Capital Contributions (required contributions; penalties for failure to contribute; necessary expenses; funding of cost-overruns)</li> <li>• Financing/Guarantees</li> </ul> |

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| <p>Class 4</p> | <p>Joint Venture Agreement</p> <ul style="list-style-type: none"> <li>• Distributions (payout percentages (also known as the “waterfall”); promote interests; subsequent funding requirements; interplay of distributions with member loans)</li> <li>• Management; Major Decisions</li> <li>• Duties of Administrative Manager</li> <li>• Affiliate Agreements</li> </ul> |
| <p>Class 5</p> | <p>Joint Venture Agreement</p> <ul style="list-style-type: none"> <li>• Forced Sale; Right of First Offer</li> <li>• Buy-Sell</li> <li>• Budget and Operating Plan</li> <li>• Transfer Rights; Right of First Offer</li> <li>• Tag-Along; Drag-Along</li> <li>• Exculpation; Indemnification</li> <li>• Default (Breach; “Bad Boy Act”; Change in Control)</li> </ul>      |

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| Class 6  | <p>Cross-Indemnity Agreement</p> <ul style="list-style-type: none"> <li>• Reimbursement Obligations</li> <li>• Implications of Transfer</li> </ul> <p>Development Agreement</p> <ul style="list-style-type: none"> <li>• Developer’s Services and Responsibilities</li> <li>• Indemnification</li> <li>• Owner’s Responsibilities</li> <li>• Fees</li> <li>• Insurance</li> <li>• Termination</li> <li>• Force Majeure</li> </ul> <p>Negotiation Skills</p> <ul style="list-style-type: none"> <li>• Basics: what’s the goal, know the substance</li> <li>• Format: in person, telephone, document exchange</li> <li>• In person meetings: location, seating arrangement, food/beverage, listening</li> <li>• Thinking ahead; tactical decisions</li> </ul> <p>Wrap-up</p> |
| Date TBD | Exam (9:00 am – 10:30 am)  |

We will meet for six, two-hour sessions. If we need to cancel class, we will determine a make-up date.

## Personal Data Sheet

1. Attach your resume.
2. What is your primary reason for signing up for this course? Any secondary reasons?
3. What do you hope to learn?
4. Do you have any experience in transactional real estate lawyering or in real estate on the business side?
5. Are any members of your family or close friends in real estate?
6. If you think about the best seminars or learning experiences you have had, what made them so?
7. Conversely, looking back, what courses didn't work and why?