

Advanced Real Estate Transactions

LAW 524
Spring 2020

Professor David Bartelsmeyer
Monday and Wednesday 5:00 - 6:15 p.m.
Room: Lesar Hall 206
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Description:

The goal of this course is introduce you to residential real estate transactions and the concepts and issues which may be encountered in the practice of residential property law.

I am a practicing transactional attorney and title agent. This is my first time to teach a course at this level. In preparing for this course, I hve relied heavily on my experience as a law student taking this course and my experience as a practicing attorney. I wish to thank former Professor Taylor Mattis for the backbones of this syllabus. This syllabus is likely to change before the semester is done. I will post such changes on TWEN and announce them in class.

Course Material:

Casebook (required): Nelson, Whitman, Burkhart, and Freyermuth, *Cases and Materials on Real Estate Transfer, Finance, and Development*(9th ed. West Academic Publishing, 2015) ISBN: 978-0-314-28860-8

Illinois Mortgage Foreclosure Law (IMFL): For your convenience you should have access to 735 ILCS 5/15-1101 through 5/15-1706 (2018)

Hornbook (as needed): Nelson, Whitman, Burkhart, and Freyermuth, *Real Estate Finance Law* (6th ed. West Academic Publishing, 2015) ISBN: 978-0-314-27832-6

Structure of Course:

Each student is expected to come to class prepared to discuss the assigned readings. At each class meeting, the instructor will randomly call upon students to respond to inquiries about the material under discussion. Those dialogues, along with material formally presented in lectures, slides, handouts, and the assigned readings constitute the course material that will be examined on both the final exam.

Evaluation:

There will be a closed-book final examination that will account for the semester grade.

Attendance Policy:

The School of Law Rules primarily govern students' attendance requirements. Pursuant to those Rules, the maximum number of absences for this course is set at six (6). Because oral participation is a central (and graded) component of this course, attendance is essential. This means that it is not possible to duplicate the classroom experience through watching a video of the course for any given day.

Being "on call" and prepared to undergo oral examination serves as a pedagogical benefit both to the individual student as well as to the entire class.

Attendance will be taken during each class. You are responsible for insuring that your attendance is recorded. If you did not sign the attendance sheet, you should check with me prior to leaving class to be sure your attendance is recorded. A failure to sign the attendance sheet will be counted as an absence.

If you come to class and are not prepared when called on, you will not receive points for attendance for that day.

Signing the daily attendance sheet is a representation that you have completed the readings and spent time thinking about any questions asked in the reading or by the instructor beforehand. It is also a representation that you have spent at least 3 hours in preparation for the class as required by the ABA Standard 310(b)(1) set out below.

Please come to class prepared to participate in class discussions and remain for the entire class period. It is disturbing to the remainder of the class for students to leave the classroom and then come back in during class. If you need to leave the classroom for some reason, please do so quietly and do not reenter the classroom until the class is over.

TWEN:

You should check TWEN prior to each class as I will occasionally add additional material to be referenced or prepared.

Laptops and Other Electronic Devices:

Laptop computers should not be used in class for any purpose other than taking notes. If any student inappropriately uses a laptop (for sending email, chatting, web browsing, etc.) he/she will be marked as absent for the day. The easiest way to avoid suspicion of laptop misuse is not to use one in class in the first instance.

Office Hours:

As an adjunct professor, I do not have regular office hours. You may reach me by e-mail at: david.bartelsmeyer@siu.edu. I will be available after class and at other times by appointment.

Workload Expectations:

The American Bar Association ("ABA") law-school-accreditation standards contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310, "a 'credit hour' is an amount of work that reasonably approximates not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks." This is a 3-credit hour class, meaning that we will spend two 75-minute blocks of time together each week. The amount of assigned reading and out-of-class preparation should take you about 3 hours for each class session and 6 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of **9 hours per week (3 in class and 6 preparing for class) on course-related work.**

Emergency Procedures:

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at www.bert.siu.edu, Department of Safety's website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency. Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will aid your instructor in evacuating the building or sheltering within the facility.

Disability Policy:

Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. If you think you may be eligible for accommodations but have not yet obtained approval please contact DSS immediately at 618-453-5738 or <https://disabilityservices.siu.edu>. You may request accommodations at any time, but timely requests help to insure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreements for each course to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations.

Saluki Cares:

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.

Assignments:

Assignments are blocked below for logic and for indication of order of presentation. Every numbered assignment will not neatly correspond with the work for a single class. For the first day of class, be prepared on all material under assignment #1.

1. Introduction to Mortgage Financing
 - a. Casebook pp. 117-130
 - b. Hornbook §§1.1 - 2.1

- c. Mortgage Forms
 - i. Casebook pp. 1437-1461
 - ii. 765 ILCS 5/11 (2018)
 - d. Be prepared to discuss in class the provisions in the various forms relating to: acceleration, method of foreclosure, transfer by mortgagor, prepayment, condemnation, hazard insurance, payment of taxes.
2. Rights and Duties of the Parties Prior to Foreclosure (Casebook Chapter 4)
- a. Theories of Title: Possession, Rents, and Related Considerations
 - i. Casebook pp. 373 - 380
 - ii. Severance article
 - iii. IMFL §§15-1701 through 15-1706 - right of possession of realty after default; receiverships. Before Taylor v. Brennan, Casebook pp. 375, note 2.
 - iv. Casebook pp. 380-413 -- Lease/rent issues.
 - v. Kelley/Lehr & Assocs. v. O'Brien, 194 Ill. App. 3d 380, 551 N.E.2d 419 (1990).
 - b. Receiverships.
 - i. Casebook pp. 413 - 428
 - c. Waste.
 - i. Casebook pp. 429 - 438
 - d. Mortgagee Liability for Environmental Problems
 - i. Casebook pp. 438 - 451
 - e. Insurance and real estate taxes.
 - i. Casebook pp. 451 - 475.
 - ii. At Casebook p. 466, note 5, read Western Employers Ins. v. Bank of Ravenswood, 159 Ill. App. 3d 22, 512 N.E.2d 9 (1987)
 - iii. At Casebook p. 471, read 765 ILCS 910/1 - 910/15 and 765 ILCS 915/1 (2018); Olsen v. Financial Fed. Sav. & Loan Ass'n, 105 Ill. App. 3d 364, 434 N.E.2d 406 (1st Dist. 1982).
 - f. The chapter deals with some problem areas in the rights and duties of the parties prior to foreclosure. It deals with theories of title and their impact, as well as the impact of statutes, upon possession, rents, receiverships, waste and liability for environmental issues. We also examine insurance of mortgaged property and the practice of using escrows to assure payment of insurance premiums and real estate taxes.
3. Recording & Title Insurance
- a. Casebook pp. 222 - 275
 - b. 765 ILCS 5/30

4. Transfer and Discharge (Casebook Chapter 5.)
 - a. Transfer of the Mortgagor's Interest
 - i. Casebook pp. 477 - 500.
 - ii. This assignment deals with transfer of the mortgagor's interest in the mortgaged premises, including assumption by the transferee of the mortgage debt contrasted with transfer merely subject to the mortgage.
 - b. Restrictions on Transfer by the Mortgagor.
 - i. Casebook pp. 500 - 506
 - ii. Provident Fed. Sav. & Loan Ass' n v. Realty Centre, Ltd., 97 Ill. 2d 187, 454 N.E.2d 249 (1983)
 - iii. Casebook pp. 506 - 516 - *Garn-St. Germain* Depository Institutions Act of 1982. (Read 430-34, window periods, lightly.)
 - iv. Fidelity Fed. Sav. & Loan Ass' n v. Grieme, 112 Ill. App. 3d 1014, 446 N.E.2d 292 (3d Dist. 1983) (on reserve).
 - v. Abdul-Karim v. First Fed. Sav. & Loan Ass' n, 101 Ill. 2d 400, 462 N.E.2d 488 (1984) (on reserve).
 - vi. Yelen v. Bankers Trust Co., 476 So. 2d 767 (Fla. Dist. Ct. App. 1985) (on reserve).
 - vii. This assignment deals with restrictions placed by the mortgage instruments on transfer by the mortgagor, including "due on sale" and "due on incumbrance" clauses. The federal *Garn - St. Germain* Act is examined in detail.
 - c. Transfer of the Mortgagee's Interest.
 - i. Casebook pp. 516 - 592.
 - ii. This assignment deals with transfer of the mortgagee's interest to the mortgaged premises and in the note, including mortgagor's defenses to enforcement by the assignee, effect of payment by mortgagor to wrong person, effect of recording on assignments, and transfer of participation interests.
 - d. Discharge of the Debt and Mortgage: By Payment or Otherwise.
 - i. Casebook pp. 592 - 630
 - ii. 765 ILCS 905/2 - 905/4 (2018).
 - iii. Liberty Loan Corp. v. FNMA, 142 Ill. App. 3d 838, 492 N.E.2d 237 (2d Dist. 1986).
 - iv. This assignment deals with discharge of the debt and mortgage, by payment or otherwise. In particular we look at prepayment penalties and then at the entitlement of a mortgagor to a written release of the mortgage lien.
 - e. Loss Mitigation
 - i. Casebook pp. 630 - 668
 - ii. IMFL §15-1401 - Deed in Lieu of Foreclosure.

5. Foreclosure (Casebook Chapter 6.) Note: Continue to check hornbook for collateral reading as needed.
- a. Acceleration and Marshaling
 - i. Casebook pp. 669; Omit Casebook pp. 674 - 678 Taylor.
 - ii. Notes - Casebook pp. 678 - 688. At note 6, study IMFL 15-1602 - Reinstatement after acceleration.
 - iii. Hornbook §10.9
 - iv. Casebook pp. 688 - 694

 - b. Miscellaneous Foreclosure Methods
 - i. Casebook pp. 694 - 695; omit Note at 695 - 696.
 - ii. IMFL §15-1402 - Consent foreclosure.
 - iii. IMFL §15-1403 - Strict foreclosure.
 - iv. Great Lakes Mort. Corp. v. Collymore, 14 Ill. App. 3d 68, 302 N.E.2d 248 (1st Dist. 1973) (on reserve).
 - (1) The statutes referred to in Collymore are now numbered as follows:
 - (a) Ch. 17 §18c is IMFL 1603(b)(1)
 - (b) Ch. 17 §18d is IMFL 1402
 - v. This assignment, dealing primarily with Illinois authority, should give you some guidelines in deciding among alternative foreclosure techniques.

 - c. Judicial Foreclosure.
 - i. IMFL §15-1404 - Terminating interests by judicial foreclosure .
 - ii. IMFL §15-1501 - Parties.
 - iii. Casebook pp. 696 - 724.
 - iv. Baldi v. Chicago Title & Trust Co., 113 Ill. App. 3d 29, 446 N.E.2d 1205 (1st Dist. 1983).
 - v. This assignment continues the discussion of judicial foreclosure, including the omitted party problem. Referring to Murphy v. Farwell at p. 700, your author has commented that "a student who understands Murphy understands all of the basic concepts of mortgage law." (Preface to 1981 edition of Casebook, at xvii.)

 - d. Power of Sale Foreclosure
 - i. Casebook pp. 724 - 759
 - ii. IMFL §15-1405 - Power of sale foreclosures outlawed in Illinois.
 - iii. This assignment deals with foreclosure by exercise of power of sale. During class discussion we shall touch upon (1) the importance of studying this type of foreclosure which is not allowed in Illinois, and (2) constitutional problems with the power of sale.

 - e. Disbursement of Foreclosure Sale Proceeds
 - i. Casebook pp. 788 - 796
 - ii. IMFL §15-1512.

- f. Reacquisition of title by Mortgagor and Related Issues
 - i. Casebook pp. 796 - 800

- g. Statutory Redemption.
 - i. Casebook pp. 615-34
 - ii. IMFL §§15-1601 - 15-1605
- 6. Some priority problems (Casebook Chapter 7).
 - a. Casebook pp. 969 - 1018
 - b. Omit "Fixtures," Casebook pp. 1018 - 1031
 - c. Casebook pp. 1031 - 1060
 - d. This chapter deals with purchase money mortgages, after acquired property clause problems, the impact on junior mortgages of replacement and modification of senior mortgages, rights in crops, Federal tax liens, and wrap-around mortgages.

- 7. The Use of Mortgage Substitutes (Casebook Chapter 3)
 - a. Absolute deed
 - i. Casebook pp. 285 - 309
 - ii. Hornbook §§ 3.4 - 3.11
 - iii. McGill v. Biggs, 105 Ill. App. 3d 706, 434 N.E.2d 772 (3d Dist. 1982)
 - iv. Beelman v. Beelman, 121 Ill. App. 3d 684, 460 N.E.2d 55 (5th Dist. 1984)
 - v. Here we consider the effect on a "disguised" mortgage transaction of the notion "once a mortgage, always a mortgage."

 - b. The Installment Land Contract
 - i. Casebook pp. 309 - 370
 - ii. Hornbook §§ 3.26 - 3.37
 - iii. 765 ILCS 5/28; 765 ILCS 70/2 (2018) -- recordability.
 - iv. 735 ILCS §§9-101 - 9-117, especially §§9-102(5), 9-110 (2018) - FEDA and installment contracts
 - v. 765 ILCS 75/2 (2018) -- certificate of compliance
 - vi. Shippey v. Traub, 138 Ill. App. 3d 434, 485 N.E.2d 1173 (3d Dist. 1985)
 - vii. Bledsoe v. Carpenter, 163 Ill. App. 3d 823, 516 N.E.2d 1013 (1987).
 - viii. First Ill. Nat'l Bank v. Hans, 143 Ill. App. 3d 1033, 493 N.E.2d 1171 (2d Dist. 1986)
 - ix. IMFL §1106(a)(2) & (c) & (d) (2018)
 - x. Pelz v. Streater Nat'l Bank, 145 Ill. App. 3d 946, 496 N.E.2d 315 (3d Dist. 1986)
 - xi. Optional: Comment, Installment Land Contracts: The Illinois Experience & the Difficulties of Incremental Judicial Reform, 1986 U. Ill. L. Rev. 91.

- 8. Servicemembers Civil Relief Act (SCRA)
 - a. Casebook pp. 869 - 871

9. Statute of Limitations
 - a. 735 ILCS §§13-206, 13-115, 13-116 (2018).
 - b. McCarthy v. Lowenthal, 327 Ill. App. 166, 63 N.E.2d 666 (1945)
 - c. Livingstone v. Meyers, 6 Ill. 2d 325, 129 N.E.2d 12 (1955)
 - d. Zyks v. Bowen, 351 Ill. App. 491, 115 N.E.2d 577 (1953)
 - e. The statutes referred to in the cases are now numbered as follows:
 - f. Former Ch. 16 (of Limitations Act) is now 13-206
 - g. Former Ch. 11 is now 13-115
 - h. Former Ch. 11b is now 13-116
10. Real Estate Sales - detailed assignments will be made available later (coverage will be as time permits)
11. Land Trusts - detailed assignments will be made available later (coverage will be as time permits)

Syllabus Attachment

Spring 2020

MISSION STATEMENT FOR SOUTHERN ILLINOIS UNIVERSITY CARBONDALE

SIU embraces a unique tradition of access and opportunity, inclusive excellence, innovation in research and creativity, and outstanding teaching focused on nurturing student success. As a nationally ranked public research university and regional economic catalyst, we create and exchange knowledge to shape future leaders, improve our communities, and transform lives.

IMPORTANT DATES *

Semester Classes Begin:	01/13/2020
Last day to add full-term course (without Dean's signature):	01/19/2020
Last day to withdraw from the University with a full refund:	01/24/2020
Last day to drop a full-term course for a credit/refund:	01/26/2020
Last day to drop a full-term course (W grade, no refund):	03/29/2020
Final examinations:	05/4—05/8/2020

Note: Please verify the above dates with the Registrar calendar and find more detailed information on deadlines at <https://registrar.siu.edu/calendars>. For add/drop dates that apply to shorter-than-full-term courses, please look at the Schedule of Classes search results at <https://registrar.siu.edu/schedclass/index.php>

SPRING SEMESTER HOLIDAYS

Dr. Martin Luther King, Jr. Birthday 01/20/2020
Spring Break 03/7—03/15/2020

DIVERSITY

Southern Illinois University Carbondale's goal is to provide a welcoming campus where all of our students, faculty and staff can study and work in a respectful, positive environment free from racism and intimidation. For more information visit: <https://diversity.siu.edu/#>

DISABILITY SUPPORT SERVICES

SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval please contact DSS immediately at 618-453-5738 or <https://disabilityservices.siu.edu>. You may request accommodations at any time, but timely requests help to insure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty.

MILITARY COMMUNITY

There are complexities of being a member of the military community and also a student, and military and veteran related developments can complicate academic life. If you are a member of the military community and in need of accommodations please visit Veterans Services at <https://veterans.siu.edu/>

STUDENT MULTICULTURAL RESOURCE CENTER

The Student Multicultural Resource Center serves as a catalyst for inclusion, diversity and innovation. As the Center continues its work, we are here to ensure that you think, grow and succeed. We encourage you to stop by the Center, located in the Student Services Building Room 140, to see the resources available and discover ways you can get involved on the campus. Visit us at <https://smrc.siu.edu/>

SALUKI CARES

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For information on Saluki Cares: call(618) 453-2461, email siucares@siu.edu, or <https://salukicare.siu.edu/>

SAFETY AWARENESS FACTS AND EDUCATION

Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here: <https://safe.siu.edu>

MORRIS LIBRARY HOURS: <https://libguides.lib.siu.edu/hours>

ADVISEMENT: <https://advisement.siu.edu/>

SIU ONLINE: <https://online.siu.edu/>

WITHDRAWAL POLICY ~ Undergraduate only

Students who officially register for a session must officially withdraw from that registration in a timely manner to avoid being charged as well as receiving a failing grade for those classes. An official withdrawal must be initiated by the student, or on behalf of the student through the academic unit, and be processed by the Registrar's office. For the proper procedures to follow when dropping courses and when withdrawing from SIU visit:

<https://registrar.siu.edu/students/withdrawal.php>

INCOMPLETE POLICY~ Undergraduate only

An INC grade may be assigned when, for reasons beyond their control, students engaged in passing work are unable to complete all class assignments for the course. An INC must be changed to a completed grade within one full semester (undergraduates), and one full year (graduate students), from the close of the term in which the course was taken or graduation, whichever occurs first. Should the student fail to complete the remaining course requirements within the time period designated, the incomplete will be converted to a grade of F and such grade will be computed in the student's grade point average. For more information visit:

<https://registrar.siu.edu/grades/incomplete.php>

REPEAT POLICY

An undergraduate student may, for the purpose of raising a grade, enroll in a course for credit more than once. For students receiving a letter grade of A, B, C, D, or F, the course repetition must occur at Southern Illinois University Carbondale. Effective for courses taken Summer 2013 or later, only the most recent (last) grade will be calculated in the overall GPA and count toward hours earned.

This policy will be applied to all transferrable credit in that only the last grade will be used to calculate grade point average. Only those courses taken at the same institution are considered repeats under this policy. See full policy at

<https://registrar.siu.edu/students/repeatclasses.php>

SIU's EARLY WARNING INTERVENTION PROGRAM (EWIP)

Students enrolled in courses participating in SIU's Early Warning Intervention Program might be contacted by University staff during a semester. More information can be found at the Core Curriculum's Overview webpage:

<https://corecurriculum.siu.edu/program-overview/>

EMERGENCY PROCEDURES

We ask that you become familiar with **Emergency Preparedness @ SIU**. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts visit: <https://emergency.siu.edu/>

CENTER FOR LEARNING AND SUPPORT SERVICES

Help is within reach. Learning support services offers free tutoring on campus and math labs. To find more information please visit the Center for Learning and Support Services website:

Tutoring : <https://cls.siu.edu/tutoring/>

Math Labs <https://math.siu.edu/courses/course-help.php>

WRITING CENTER

The Writing Center offers free tutoring services to all SIU students and faculty. To find a Center or Schedule an appointment please visit:

<https://write.siu.edu/>

GRADUATE POLICIES

Graduate policies often vary from Undergraduate policies. To view the applicable policies for graduate students, please refer to the graduate catalog at

<https://gradschool.siu.edu/about-us/grad-catalog/>

Need help with an issue? Please visit SALUKI SOLUTION FINDER at

<https://solutionfinder.siu.edu/>

PLAGIARISM

See the Student Conduct Code <https://srr.siu.edu/student-conduct-code/>