

**Advanced Real Estate Transactions**

**Law 524**

Monday and Wednesday 11:00 – 12:15

Room: 251

Spring, 2023

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**Description:**

The goal of this course is to 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. In preparing for this course, I have considered previous course outlines, and I have relied on my experience as a practicing attorney.

**Course Material:**

Casebook (required): Burkhart, Freyermuth, Odinet, Nelson, and Whitman, Real Estate Transfer, Finance, and Development: Cases and Materials (10<sup>th</sup> ed. West Academic Publishing, 2021)

ISBN: 978-1-68467-681-1

Lindsey's Real Estate Finance in a Nutshell (8<sup>th</sup> Edition West Academic Publishing, 2022)

ISBN: 978-1-63659-527-6

Illinois Mortgage Foreclosure Law (IMFL): For your convenience you should have access to 735 ILCS 5/15-1101 through 5/15-1706 (2020)

Hornbook (as needed): Nelson, Whitman, Burkhart, and Freyermuth, Real Estate Finance Law (6<sup>th</sup> 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 or handouts. At each class meeting, I may 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 on which you will be examined

## **Evaluation:**

I intend to have several in-class written assignments, and a final exam. I will evaluate you on your performance on the periodic assignments, class participation and preparedness, and a closed-book final examination.

## **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 or listening to a recording for any given day. Therefore, recording is not permitted. However, if the Law School records the class as a part of its evaluation of me, or the class material, I will advise you.

Attendance will be taken during each class. You are responsible for ensuring 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 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) .

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 re-enter the classroom until the class is over.

## **D2L:**

You should check D2L course page 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.) the student will be marked as absent for the day.

## **Office Hours:**

As an adjunct professor, I do not have regular office hours. You may reach me by e-mail at: john.rendleman@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:**

We ask that you become familiar with Emergency Preparedness at SIU. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness at SIU website and through text and email alerts. To register for alerts, visit:

<http://emergency.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 [disabilityservices.siu.edu](mailto:disabilityservices.siu.edu). You may request accommodations at any time, but timely requests help to ensure 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 Disability Accommodation Agreement with DSS, students should use the DSS Student Portal to notify their faculty members and the School of Law Registrar’s Office of their 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, emotion, financial, or personal. By working closely with faculty, staff, students, and their families, SIUC 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 Care: (618) 453-2461, or [siucares@siu.edu](mailto:siucares@siu.edu), <https://salukicare.siu.edu/index.php>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is [judiray@siu.edu](mailto:judiray@siu.edu) and her phone number is (618) 453-3135.

### **COVID-19:**

SIUC's policy on face masks and social distancing is consistent with the guidance from the Centers for Disease Control and Prevention and the Illinois Department of Public Health. For up-to-date information, students, faculty, and staff should visit SIU's COVID website ([siu.edu/coronavirus](http://siu.edu/coronavirus)), which includes the Saluki Safety Plan. People can also send an email to [pandemicinfo@siu.edu](mailto:pandemicinfo@siu.edu).

### **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. The dates indicated for each assignment are not set in stone. The dates are a prediction of when we will reach that material. The dates may adjust as the semester progresses.

- 1) Real Estate Sales **January 30, 2023**
  - a) Sales forms (found on D2L)
  - b) Review the forms for discussion in class on how a real estate transaction takes place.
  - c) Casebook pp 3-129
  
- 2) Introduction to Mortgage Financing **February 1, 2023**
  - a) Casebook pp. 138 149
  - b) Hornbook §§1.1-2.1
  - c) Mortgage Forms
    - i) Casebook pp. 1139 – 1170
    - 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.
  
- 3) Rights and Duties of the Parties Prior to Foreclosure (Casebook Chapter 4) **February 6, 2023**
  - a) Theories of Title: Possession, Rents, and Related Considerations
    - i) Casebook pp. 348 – 354
    - ii) Severance article
    - iii) IMFL §§15-1701 through 15-1706 – right to possession of realty after default; receiverships. Before Casebook pp. 350, note 2.
    - iv) Kelley/Lehr & Assocs. v. O'Brien, 194 Ill. App. 3d 380, 551 N.E.2d 419 (1990).
    - v.) Casebook pp. 354 – 379 – Lease/rent issues.
  
  - b) Receiverships **February 8, 2023**
    - i) Casebook pp. 379 -388
  
  - c) Waste **February 13, 2023**
    - i) Casebook pp. 388 – 398
  
  - d) Mortgage Liability for Environmental Problems **February 13, 2023**
    - i) Casebook pp. 398 -410

- e) Insurance and Real Estate Taxes **February 15, 2023**
- i) Casebook pp. 410 – 430
  - ii) At Casebook p. 425, 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. 430, 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 (1<sup>st</sup> 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.

- 4) Recording & Title Insurance **February 6, 2023**
- a) Casebook pp. 209 – 264
  - b) 765 ILCS 5/30

- 5) Transfer and Discharge (Casebook Chapter 5.)
- a) Transfer of the Mortgagor’s Interest **February 13, 2023**
    - i) Casebook pp. 431 – 452.
    - 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. **February 13, 2023**
  - i) Casebook pp. 452 – 458
  - ii) Provident Fed. Sav. & Loan Ass’n v. Realty Centre, Ltd., 97 Ill. 2d 187, 454 N.E.2d 249 (1983)
  - iii) Casebook pp. 458 – 464 – Garn-St. Germain Depository Institutions Act of 1982.
  - iv) Fidelity Fed. Sav. & Loan Ass’n v. Grieme, 112 Ill. App. 3d 1014, 446 N.E.2d 292 (3<sup>rd</sup> Dist. 1983).
  - v) Abdul-Karim v. First Fed. Sav. & Loan Ass’n, 101 Ill. 2d 400, 462 N.E.2d 488 (1984).
  - vi) Yelen v. Bankers Trust Co., 476 So. 2d 767 (Fla. Dist. Ct. App. 1985).
  - 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. **February 20, 2023**
  - i) Casebook pp. 464 – 520
  - 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 of Otherwise. **February 22, 2023**
  - i) Casebook pp. 520 – 548

- 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.

**\*\*\*Take-home Writing Across the Curriculum (WAC) and Bar Question assignment \*\*\***  
**Assigned February 13, 2022 and due March 4, 2023**

- e) Loss Mitigation **February 27, 2023**
  - i) Casebook pp. 548 – 570
  - ii) IMFL §15-1401 – Deed in Lieu of Foreclosure.
  
- 6) Foreclosure (Casebook Chapter 6.) Note: Continue to check hornbook for collateral reading as needed.
  - a) Acceleration and Marshaling **March 1, 2023**
    - i) Casebook pp. 571 – 592
    - ii) Note 6 (Casebook pp. 584), study IMFL 15-1602 – Reinstatement after acceleration.
    - iii) Hornbook §10.9
  
  - b) Miscellaneous Foreclosure Methods **March 1, 2023**
    - i) Casebook pp. 592 – 594
    - 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 (1<sup>st</sup> 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 **March 6, 2023**
    - i) IMFL §15-1404 – Terminating interests by judicial foreclosure.
    - ii) IMFL §15-1501 – Parties.
    - iii) Casebook pp. 594 – 608
    - iv) Baldi v. Chicago Title & Trust Co., 113 Ill. App. 3d 29, 446 N.E.2d 1205 (1<sup>st</sup> Dist. 1983).
    - v) This assignment continues the discussion of judicial, foreclosure, including the party problem.
  
  - d) Power of Sale Foreclosure **March 8, 2023**
    - i) Casebook pp. 608 – 661
    - 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 power of sale.

- e) Disbursement of Foreclosure Sale Proceeds **March 8, 2023**
  - i) Casebook pp. 661 – 665.
  - ii) IMFL §15-1512.
  
- f) Requisition of title by Mortgagor and Related Issues **March 22, 2023**
  - i) Casebook pp. 665 – 670
  
- g) Statutory Redemption. **March 22, 2023**
  - i) Casebook pp. 670 – 697
  - ii) IMFL §§15-1601 – 15-1605
  
- 7) Some priority problems (Casebook Chapter 7). **March 27, 2023**
  - a) Casebook pp. 670 – 697.
  - b) Omit “Fixtures,” Casebook pp. 891 – 902
  - c) Casebook pp. 902 – 913
  - 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.
  
- 8) The Use of Mortgage Substitutes (Casebook Chapter 3)
  - a) Absolute deed **March 29, 2023**
    - i) Casebook pp. 273 – 293
    - 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 (5<sup>th</sup> 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 **March 29, 2023**
    - i) Casebook pp. 294 – 336
    - 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.
  
- 9) Servicemembers Civil Relief Act (SCRA) **April 3, 2023**
  - (a) Casebook pp. 735 – 737

10) Statute of Limitations

**April 5, 2023**

- 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:
  - i) Former Ch. 16 (of Limitations Act) is now 13-206
  - ii) Former Ch. 11 is now 13-115
  - iii) Former Ch. 11b is now 13-116

11) Land Trusts – detailed assignments will be made available later

**April 10, 2023**

**SIUC Syllabus Attachment**