

Real Estate Ventures I: Negotiating Development-Phase Agreements

11.351

Fall 2011

3-0-6

Instructor: W. Tod McGrath, Lecturer, wtod@advisore.com

Teaching Assistants: Michael Tilford, mbtilford@gmail.com
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Time and Location: Thursday evenings 6:00 to 9:00 pm, Building E51-145

Course Description:

This course prepares students to negotiate the most important business issues within six of the principal agreements a real estate developer negotiates relating to the site control, entitlement, capitalization, and construction phases of a real estate development venture. More specifically, (i) the site control phase involves negotiating right-of-entry and purchase and sale agreements with a landowner, (ii) the entitlement phase involves negotiating a development agreement with a municipality, (iii) the capitalization phase involves negotiating equity joint-venture and construction loan agreements with capital providers, and (iv) the construction phase involves negotiating a construction contract and general conditions with a general contractor.

Students spend 4 to 5 hours of class time discussing the most important business issues in each agreement (and the case law relating thereto), working closely with prominent real estate attorneys who specialize in the construction of such agreements. The journey through each agreement ends with a 1 to 2 hour negotiation session, with each party represented by counsel. Students generally alternate between negotiating the role of the developer and the role of the counter-party to the agreement. Due to this particular format of instruction, enrollment in the course is limited.

This course involves a *significant* amount of reading, which is required to be completed prior to working with the attorneys in class. Accordingly, prior to the first class session devoted to each agreement, students are required to hand in *individual* written responses (approximately 3 pages in length) to questions relating to the specific form agreements, judicial opinions, and other background readings that are the subject of class discussion and negotiation. There is no mid-term or final exam, or prerequisite for the course.

Grading:

Six (6) written responses (13% each)	78%
Class Participation	10%
Class Attendance	<u>12%</u>
	100%

Course Schedule:

- Thurs. Sept. 8th:** Course introduction; overview of environmental liability; deliberation with counsel re: Right of Entry Agreement.
- Thurs. Sept. 15th:** Continued deliberation with counsel; negotiation of Right of Entry Agreement.
- Thurs. Sept. 22nd:** **First written assignment due** (beginning of class); discussion of elements of a contract; deliberation with counsel re: Purchase & Sale Agreement.
- Thurs. Sept. 29th:** Continued deliberation with counsel; negotiation of Purchase & Sale Agreement.
- Thurs. Oct. 6th:** **Second written assignment due** (beginning of class); discussion of zoning and regulatory takings; deliberation with counsel re: Development Agreement.
***Note:** Class will be held at 6:30 PM at the Massachusetts Appeals Court, John Adams Courthouse, One Pemberton Square, Boston.*
- Thurs. Oct. 13th:** Continued deliberation with counsel; negotiation of Development Agreement.
- Thurs. Oct. 20th:** **Third written assignment due** (beginning of class); discussion of investment in Graybar Building Associates.
- Thurs. Oct. 27th:** No class (ULI Fall Meeting in Los Angeles).
- Weds. Nov. 2nd:** **Fourth written assignment due** (beginning of class); discussion of duties and financial issues in joint-ventures; deliberation with counsel re: Equity Joint-Venture (LLC) Agreement. ***Note:** Class will be held at 6:30 PM at the law office of Goodwin Procter, Exchange Place, Boston.*
- Thurs. Nov. 3rd:** Continued deliberation with counsel; negotiation of Equity Joint-Venture (LLC) Agreement.
- Thurs. Nov. 10th:** **Fifth written assignment due** (beginning of class); overview of construction contract types and potential areas of conflict; deliberation with counsel re: Guaranteed Maximum Price Construction Contract and General Conditions.
- Thurs. Nov. 17th:** Continued deliberation with counsel; negotiation of Guaranteed Maximum Price Construction Contract and General Conditions. ***Note:** Class will be held at 6:30 PM at the offices of Boston Properties, Prudential Tower, Boston.*
- Thurs. Nov. 24th:** No class. Happy Thanksgiving.

Thurs. Dec. 1st:

Sixth (final) written assignment due (beginning of class); overview of closing agendas, special purpose entities, and required guarantees; deliberation with counsel re: Construction Loan Agreement.

Thurs. Dec. 8th:

Continued deliberation with counsel; negotiation of Construction Loan Agreement and guarantees.

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Time Allocations: Prior to and During Class Sessions

