

Background for Independent Study Course/Clinical Program – “Non-Profit Residential Real Estate Transactions”

Project History:

In April 2002 the University of Florida Levin College of Law approved a course that would “provide a unique opportunity for law students to gain valuable experience in real estate transactions.” The course, entitled “**Non-Profit Residential Real Estate Transactions**,” was designed to allow law students, under the supervision of law professors, local practitioners and Habitat for Humanity International (HFHI) representatives, to gain familiarity with institutions, methods, specific legal instruments and procedures involved in non-profit residential real estate transactions by working on Habitat for Humanity home closings for the Alachua County HFHI Affiliate.

Third year law students submitted the proposal which was sponsored by three faculty members and approved by the Faculty Curriculum Committee.

Premises:

1. Most law school graduates lack practical legal skills in real estate transactions.
2. A significant body of low-and-moderate-income prospective homeowners cannot afford adequate legal services in the area of real estate transactions.

Solution:

Law school courses/clinical programs can teach law students within actual real estate transactions to provide legal services to needy prospective homeowners. These courses/programs can be offered in conjunction with non-profit entities that provide non-traditional (such as the “sweat equity” concept) home ownership programs. This is a pivotal area of legal service that is often overlooked yet has the potential to significantly impact the lives of low-and-moderate-income persons in tangible ways.

Benefits of Proposed Real Property Clinic Programming:

1. Law Students: gain valuable practical legal skills and increase marketability
2. Ultimate client: improved legal services
3. Law Schools: improve clinical programming offerings; enhance legal education offered to students and improve relationship with the community
4. Non-Profit organization: economic benefit of low cost legal services for closings and related legal services

**INDEPENDENT STUDY COURSE /CLINICAL PROGRAM APPROVED BY THE
FACULTY BOARD OF THE
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
Spring 2002**

Course Name:	Non-Profit Residential Real Estate Transactions
Number of Credits:	2
Prerequisites:	Property
Method of Student Evaluation:	25-page Research Paper, Class Participation, and Student Exit Evaluation
Course Description:	<p>This independent study course will provide in-depth and hands-on study of non-profit residential real estate transactions. The course will use local and regional real estate transactions of the Habitat for Humanity International (HFHI) Program as case studies. Students will study an array of legal issues related to residential real estate conveyance including: issues related to relate estate contracts, the professional responsibility of lawyers in real estate transactions, title assurance, non-profit financing and the extensive federal regulatory overlay related to real estate transfers. As the semester progresses, students will develop a topic for and write a substantial research paper on a relevant legal topic and will attend and support closings handled by local practitioners for the HFHI program.</p>
Reason for Study:	<p>The trend in non-profit sponsorship of residential real estate development has been supported by both legislation and private entities in recent years. For example, since 1976 HFHI has built more than 100,000 homes, providing affordable housing to over one-half million individuals. The 104th Congress specifically named HFHI when it passed legislation fostering homeownership through the use of “sweat equity” requirements.</p> <p>This independent study will provide a unique opportunity for law students. Under the supervision of law professors, local practitioners, and HFHI representatives, students will study and gain valuable experience with the institutions, methods, specific legal instruments and procedures involved in non-profit residential real estate transactions. This course will provide advanced knowledge of real estate transactions.</p>

Required Books/Materials:

1- REAL ESTATE TRANSFER, FINANCE AND DEVELOPMENT, Fifth Edition, by Nelson & Whitman (ISBN 0-314-22664-8) or other appropriate real property law transaction text

2 - Habitat for Humanity International Training Manual, current edition.

3 – Title insurance underwriter courseware may be useful in practical skills instruction for real estate closing and title procedures

4 – “Affordable Housing and Pro Bono,” ABA JOURNAL OF AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT LAW, Vol. 7, No. 3 (Spring 1998)

5 – Additional resources as determined by professor

Professor/Student Contact:

Weekly 2-hour in-class sessions supplemented with required activities to support real estate closings as scheduled.

COURSE OUTLINE

Non-Profit Residential Real Estate Transactions

- 1) Provision of Housing
 - a) Role of Government in Providing Housing (Historical and multi-cultural perspective)
 - b) Role of HFHI in Providing Housing
- 2) Residential Real Property Ownership and Interests
 - a) Property Boundary and Survey Issues (Grant lands v. Spanish land grants)
 - b) Issues Related to Co-ownership
 - c) Platting Process Under State and Local Requirements
- 3) Contracts for the Transfer of Residential Real Estate (Including “good faith” requirements, analysis of damages available to non-breaching party, and broker liability)
- 4) Ethical Issues surrounding legal representation in real estate transactions (Representation of lender, representation of seller, representation of buyer) – Analysis of Model Rules regarding ability of attorney to represent all parties
- 5) Title Assurance
 - a) Methods of Title Assurance by Title Insurance, Legal Opinions, Review of Abstracts, and Warranties
 - b) Analysis of law regulating title insurance rates and contracts, and dual role of attorney as legal counsel and as title insurance agent
- 6) Residential Real Estate Financing: Federal Regulation of Mortgages
 - a) FHA, VA Loans and Associated Regulatory Requirements
 - b) Real Estate Settlement Procedures Act (RESPA)
 - c) Private Enforcement of Federal Requirements
 - d) Requirements upon HFHI to comply with FHA and VA requirements in design, construction, and sale of single-family residences and information and operation of Home Owners’ Association
 - e) Applicable state law regulating Home Owners’ Association vs. federal regulation to comply with FHA and VA requirements
- 7) Duties Arising as a Result of the Contract
 - a) Duty to Disclose
 - b) Contractual and Negligence Liability for Defects (role of the economic loss rule)
 - c) The New Uniform Statewide Building Code
 - d) Potential for loss to buyer of new construction caused by bankruptcy protection of the builder
- 8) Issues Related to Property Insurance (Risk of Loss; conflicting rights of lender, seller, buyer)

- 9) Curing Title Defects
 - a) Relevant state specific statutes, title standards and cases
 - b) Marketable Record Title Act
 - c) IRS, Estate and Other Tax Liens
 - d) Quiet Title Actions (Including requirements to provide marketable title by use of diligent search, constructive service, and ad litem)
 - e) "Exploration" of Mineral Rights, MRTA, Right of Entry, and Partition
- 10) Recordation: relevant state specific statutes
- 11) Priority Issues -- (Relevant state specific references; discuss actual knowledge, including duty to inquire, and lender demands)
 - a) IRS Rights and Priorities – Ability of Taxpayer to Convey
 - b) MRTA Protection and Computerization of Public Records
 - c) Clerk Errors in Recording and Indexing
- 12) Unique Issues
 - a) Grants to Railroad Companies and the Reversionary Interest
 - b) Public Trust Doctrine
 - c) Land Act of 1805 and Sovereignty Lands
 - d) TIIIF
 - e) State Government and Proof of State Lands