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MODERN REAL ESTATE  
FINANCE AND  
LAND TRANSFER.  
*A Transactional Approach*

*Fourth  
Edition*



Wolters Kluwer

Law & Business

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# MODERN REAL ESTATE FINANCE AND LAND TRANSFER

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**A Transactional Approach**

**Fourth Edition**

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*To my mother, Irene, and to  
Ana and my son Dominic*

— S.B.

*To my husband,  
Michael Pensack,  
and our children,  
Geoffrey and Elizabeth*

— C.M.H.

*To my wife, Marcia Bernstein,  
and to the memory of my beloved  
mother, Thelma M. Madison*

— M.M.

*To Ruth and Arthur Zinman  
and to Lillian and Noah Janel*

*sine qua non*

— R.Z.

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## Preface

This fourth edition builds on the pedagogical vision of the first edition (then titled *Modern Real Estate Financing: A Transactional Approach*, by Michael Madison and Robert Zinman), the second edition (that added Steven Bender as coauthor), and the third edition (adding Celeste Hammond). It has been our experience that most law students are more stimulated when they see some practical value in what they are learning in the classroom. The professor can stimulate students' intellectual curiosity to deal with complex issues in land transactions by simulating the real-world conditions of practice and avoiding pedantic discussions of peripheral issues (such as the doctrine of equitable mortgages, which rarely arises in a commercial real estate practice). For this reason, our casebook follows the transactional approach.

In our judgment, freedom of contract still remains the dominant theme in commercial real estate transactions despite the regulatory impact of public law on land investment and development. As long as the real estate project does not fail and the developer remains solvent, general rules of law will normally apply only in the absence of an agreement to the contrary. Perhaps this is because in most commercial real estate transactions the parties will be sophisticated—they will be represented by counsel and in a position to defend themselves at the bargaining table. For example, at common law the general rule (absent language to the contrary in the mortgage note) is that a lender does not have to accept voluntary prepayment of the mortgage indebtedness prior to maturity. We examine this rule in Chapter 5. But it is of equal if not greater importance for students to see what a typical prepayment privilege provision looks like and to understand the legal consequence of using one drafting approach as opposed to another. As counsel someday, students will be able to not only solve present problems but also avoid potential problems for their clients. This is what real estate planning that adds value to transactions is all about.

The practice of real estate transactions also requires an understanding of the steps within a transaction or lending cycle and how those steps relate to and flow from each other. For example, in Chapter 6 we examine why a borrower's ability to obtain construction financing will often depend on whether the borrower is able beforehand to secure a loan commitment for the postconstruction, or "permanent" loan.

Accordingly, our aim is to expose students to the legal issues they will confront in practice and to teach them to think as real estate lawyers do. To that end, the book follows the transactional approach and includes questions and planning problems designed to test the students' abilities to spot issues and arrive at logical conclusions based on cases, statutes, documents, articles, and other materials.

### Organization

In addressing modern real estate financing, the book follows the actual lending cycle chronologically. We anticipate that when students begin to understand how one stage in the lending cycle follows from another, they will perceive a natural and cohesive flow in



the classroom discussion. Chapters 3-6 deal with the fundamentals of real estate financing, and in doing so employ a master hypothetical involving a typical real estate developer ("Dan Developer") who plans to construct an office building in the fictional state of Fuller. Students follow Dan as he wades through the commercial real estate lending cycle from negotiating a loan commitment from a typical postconstruction lender to obtaining his construction financing from a typical construction lender. Foreclosure proceedings are covered in Chapter 8 and the Bankruptcy Code in Chapter 18. This is where the methodology of the book departs from an analytical-transactional to an analytical-doctrinal approach. Recently, borrower insolvency has become a litigation trigger for lawsuits against lenders. Accordingly, in Chapter 9 we examine lender liability.

This book also addresses advanced aspects of real estate investment and financing. For example, in Chapters 7 and 11 we discuss subordinated purchase money mortgages and leasehold mortgages. We also cover the sale and leaseback of underlying land to reduce initial cash outlay and possibly increase tax deductions by separately financing the cost of the land. In Chapter 15, we examine the recent phenomenon, called securitization, that someday may revolutionize the way in which real estate is financed. Then, as explained in Chapter 7, once a project has been completed and is successful, some of the accumulated equity in the project can be translated into tax-free cash through refinancings and secondary financings.

In addition to basic and advanced real estate financing, this book covers other important aspects of real estate transactions. These include issues in the acquisition and sale of developed or undeveloped realty (Chapter 2), an overview of commercial leasing (Chapter 10), advanced leasehold financing issues (Chapter 11), treatment of leases in bankruptcy (Chapter 18), and environmental liabilities in real estate financing, sale, and leasing (Chapter 19). Moreover, the book's third edition added new chapters addressing common interest community ownership (condominiums, cooperatives, and planned communities) (Chapter 16), and alternative dispute resolution (negotiation, mediation, arbitration) in real estate transactions (Chapter 17).

Because tax considerations play such an important role in real estate investment and financing decisions, this book attempts to integrate tax aspects of these decisions into the discussion. In addition, Chapter 13 provides an overview of issues relevant to the status of real estate as a limited tax shelter. Chapter 14 examines the taxation issues relevant in selecting the developer's ownership entity.

This book contains documentary excerpts because our aim is to make the relevant documentation the matrix for our discussion. We have also prepared a separate Documents Manual, which includes the major documents in their entirety. The Documents Manual is available on-line without cost to students at <http://www.law.uoregon.edu/faculty/sbender/docmanual.pdf> (use the password docmanual if necessary).

Finally, in editing case materials and articles, we omitted many case, statutory, and other citations, as well as footnotes, without indication. Those footnotes that remain retain their original numbers.

*Steven W. Bender  
Celeste M. Hammond  
Michael T. Madison  
Robert M. Zinman*

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Dickerson-Moore, Professor of Law, South Texas College of Law, affiliated with Texas A & M University, The Return of the Real Estate Investment Trust, 11 Prac. Real Est. Law. 49 (March 1995). Reprinted by permission of the author.

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Halper, People and Property: The Role of a Real Estate Lawyer, 13 Real Est. Rev. 14 (Spring 1983). Copyright © by West Group (1-800-328-WEST). All rights reserved. Reprinted by permission of West Group.

Hammond, The (Pre)(As)sumed “Consent” of Commercial Binding Arbitration Contracts: An Empirical Study of Attitudes and Expectations of Transactional Lawyers, 36 J. Marshall L. Rev. 589 (2003). Copyright 2003 by the John Marshall Law Review. Reprinted by permission.

Harris, Legal Opinions: Real Estate Contracts, 14 Real Est. Rev. 12 (Spring 1972). Reprinted by permission.

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Hudson-Wilson and Fabozzi, Why Real Estate?, J. Portfolio Mgmt. 12 (Sept. 2003). Reprinted by permission.

Hyatt, Common Interest Communities: Evolution and Reinvention, 31 J. Marshall L. Rev. 303 (1998). Copyright 1998 by the John Marshall Law Review. Reprinted by permission.

Introductory Comment, Uniform Simplification of Land Transfer Act, 14 U.L.A. 271 (1977). Reprinted by permission of the National Conference of Commissioners on Uniform State Laws, Chicago, IL.

Joyce, Financing Real Estate Developments, 11 The Colo. Law. 2093 (Aug. 1982). Reprinted by permission of the Colorado Bar Association.

Kotlarsky, Capital Gains and Tax Policy, 41 Tax Notes 319 (1988). Reprinted by permission.

Lahny, Asset Securitization: A Discussion of the Traditional Bankruptcy Attacks and an Analysis of the Next Potential Attack, Substantive Consolidation, 9 Am. Bankr. Inst. L. Rev. 815 (2001), was the basis for the Lahny materials in Chapter 15C and is reproduced with permission.

Levy, Construction Loan Decision-Making Issues and Documents: Risks and Benefits. Chemical Bank, 1989. Reprinted by permission of the author.

Madison, The Real Properties of Contract Law, 82 Boston U. L. Rev. 405 (2002).

Madison, Dwyer, and Bender, The Law of Real Estate Financing, sections 1:6, 5:63-5:67, 5:128-131, 6:46-6:51, 8:20-8:24, 10:2. Copyright © by West Group (1-800-328-WEST) All rights reserved. Reprinted by permission of West Group.

Mark, Leasehold Mortgages-Some Practical Considerations, 14 Bus. Law. 609 (1959). Reprinted by permission.

McKee, The Real Estate Tax Shelter: A Computerized Expose, 7 Va. L. Rev. 521, 556-567 (1971). Reprinted by permission.

Mehr and Kilgore, Enforcement of the Real Estate Loan Commitment: Improvement of the Borrower's Remedies, 24 Wayne L. Rev. 1011 (1978). Reprinted with permission from The Wayne Law Review.

Morrison and Senn, Carving Up the "Carve-outs" in Nonrecourse Loans, 9 Prob. and Prop. 8 (May/June 1995). Reprinted by permission. Copyright © 1995 by the American Bar Association. All rights reserved. No part of this publication may be reproduced without written permission.

Mortgage and Real Estate Executive's Report, Mar. 1, 1985, p. 5. May 15, 1987, p. 3-6. Reprinted by permission from the Mortgage and Real Estate Executive's Report. Copyright © by Warren, Gorham & Lamont, Inc. All rights reserved.

Murray, Off Balance-Sheet Financing: Synthetic Leases, 32 Real Prop., Prob. & Tr. J. 194 (Summer 1997). Reprinted with permission. Copyright © 1997 American Bar Association.

Nessen and Ragalevsky, The Changing Role of Lawyers in Real Estate Transactions, 5 Real Est. Fin. 32 (Spring 1988). Reprinted by permission from Federal Research Press.

Richards, "Gradable and Tradable": The Securitization of Commercial Real Estate Mortgages, 16 Real Est. L.J. 99 (1987). Reprinted by permission of Warren, Gorham & Lamont, Inc.

Roberts, Negotiating and Drafting Workout Agreements, 3 Mod. Real Est. Trans. 1393 (1987). Copyright 1987 by The American Law Institute-American Bar Association Committee on Continuing Professional Education. Reprinted by permission.

Rubin, Orszag, and Sinai, Sustained Budget Deficits, Longer-Run U.S. Economic Performance, and the Risk of Financial and Fiscal Disarray. Reprinted by permission.

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Shenkman and Marshall, Commercial Real Estate and the 1993 Tax Act-Parts 1 and 2, 10 Real Estate Fin. J. 9-10 (Summer 1994), 15-16 and 13-16 (Fall 1994). Copyright 1999 by West Group (1-800-328-WEST). All rights reserved. Reprinted with permission from Real Estate Finance Journal.

Shurtz, A Decision Model for Lease Parties in Sale-Leasebacks of Real Estate, 23 Wm. & Mary L. Rev. 385, 435-438 (1982). Reprinted by permission of the author.

Schwartz, Real Estate and the Tax Reform Act of 1986, 16 Real Est. Rev. 28 (Winter 1987). Reprinted by permission of Warren, Gorham & Lamont, Inc.

Smith, Refinancing a Syndicated Property, 16 Real Est. Rev. 16 (Spring 1986). Reprinted by permission of Warren, Gorham & Lamont, Inc.

Smith and Lubell, The Permanent Mortgage Loan Commitment, 4 Real Est. Fin. 7 (Winter 1978). Reprinted by permission of Warren, Gorham & Lamont, Inc.

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Smith and Lubell, Real Estate Financing: The Streamlined Mortgage, 4 Real Est. Rev. 21 (Summer 1974). Reprinted by permission of Warren, Gorham & Lamont, Inc.

Stewart, Note, Taxation of Sale and Leaseback Transactions, 32 Vand. L. Rev. 945 (1979). Reprinted by permission of Vanderbilt Law Review.

Uri, The Participating Mortgage: Spreading the Risks and Rewards of Ownership, 5 Real Est. Fin. 37 (Spring 1988). Reprinted by permission of Federal Research Press.

Washburn, The Judicial and Legislative Response to Price Inadequacy in Mortgage Foreclosure Sales, 53 S. Cal. L. Rev. 843 (1980). Reprinted with the permission of the Southern California Law Review.

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