Meeting Times and Places:

The course will meet between 11:05 and 12:20 on Tuesdays and Thursdays in Vanderbilt Hall, Room 216.

Focus of the Course:

In this course, we will examine how lawyers can help to create value in transactions relating to the development of real estate. Real estate development involves many opportunities for deal-making because:

- the developer must secure financing for the project, which may involve going into partnership or joint ventures with a variety of sources of capital;
- the developer must convince some or all of the following authorities and interest groups of the appropriateness of the proposed development:
  - the local government’s planning and zoning authority;
  - federal, state and local regulatory agencies charged with protecting the environment, historic buildings and other resources;
  - federal, state and local authorities charged with providing transportation, education and other public services that would be affected by the development;
  - local economic development and taxing authorities;
  - the neighborhood in which the development would be built;
  - the landowners and tenants of the land immediately adjacent to the proposed development.
- a developer must buy the land from the landowner;
- the developer must secure architects, engineers, contractors, sales agents, and a host of other professionals to build the development.
- the developer must then sell or lease the development to homebuyers, renters, commercial lessees or investors.

In each of those transactions, the developer may need a lawyer’s assistance in negotiating the distribution of the value at stake in the transaction. But much more importantly, the developer may need a lawyer’s assistance in creating value – in recognizing opportunities for win/win situations in which both sides end up with something more than they had when they began.

This course will examine the ways in which deals involving real estate can create value. It will examine the barriers that commonly stand in the way of creating value – barriers like differences in the information held by the bargaining parties, problems of adverse selection and moral hazard, gaps between the goals of a principal and the actions of the principal’s agents, the
inability of contracts to specify all the contingencies that might arise in the course of a relationship, and the opportunity that the investment of fixed assets provides for others to exploit the owner’s lack of options. It will then examine the “toolbox” of strategies that savvy lawyers have for overcoming those barriers.

In the first half of the semester, we’ll learn primarily through readings, classroom discussion and case studies. In the second half, we’ll apply what we’ve learned by analyzing in detail eight examples of noteworthy deals involving real estate. Working in teams that will be randomly assigned, students will analyze one of featured deals by researching the parties to the deal and the context in which it arose, examining the final documents memorializing the deal, trying to discern the problems the documents were addressing, and assessing alternative strategies for resolving those problems. The team will present its analysis to the remainder of the class. In the next meeting of the course, one of the lawyers or principals involved in the deal will attend the class as a guest, explain the deal, and answer questions posed by the team that analyzed the deal as well as those of other members of the class.

Course materials:

The course materials will be excerpts from a variety of books and articles, along with case studies, that will be distributed via Blackboard (all documents will be posted in the Course Documents folder). If you have any difficulties retrieving the documents, please be in touch with my assistant, Danielle Scugoza in Suite 314 of VH (her contact information is given below). No hard copies will be available from the bookstore or from my office; if you wish to use hard copies, please print what you need from Blackboard.

Syllabus

A syllabus for the course is posted on Blackboard in the Course Information folder. We may move through some material more quickly, or more slowly, than planned, so the syllabus is only a guide.

Course requirements:

1. **Class Participation:** Students will be expected to attend and participate in each class. Especially on days when guests will be joining the class, it is essential that every member of the class attend and be on time. If you have some illness or other emergency that prevents you from attending class, please send me an e-mail in advance of the class.

2. **Team Analysis of Guest Deal:** The class will be divided into eight teams. Each team will be responsible for presenting to the class a preview of a deal that I have chosen to feature in the second half of the course. The team responsible for the deal will use documents from the deal, along with any information team members can uncover through publicly available sources,
to prepare a powerpoint or other presentation describing the parties, the context in which the deal arose, the opportunities to create value between the parties, the challenges that the parties faced in seeking to create such value, alternative strategies for resolving those challenges, and the pros and cons of the strategy chosen as well as those of the roads not taken. The team will present their preview to the class on an assigned Tuesday to prepare classmates to question the principals and/or attorneys actually involved in the deal, who will visit the class the following Thursday. No later than class on Tuesday, the team will submit a list of at least 10 questions that Professor Been will forward to the guest in order to structure the discussion with the guest. The team will also bear primary responsibility for questioning the guest during the class the guest attends.

After the guest attends a session of the class to discuss the deal, the team assigned to the deal will prepare a memorandum analyzing the deal in detail, focusing especially on alternative strategies that the parties could have pursued during negotiations, drawing both from our readings and class discussion and other deals that the class has analyzed. That memo will be due 14 days after the principal or attorney involved in the deal visits the class. A more detailed explanation of the memorandum required is attached.

3. Team “On-Call” for Guest Deal: Each team also will be assigned responsibility for being on-call, i.e., especially prepared for and ready to engage about, one of the deals for which the team does not have primary responsibility.

4. Exam: The exam for the course will be a 24 hour take-home exam, with appropriate page limits. You will be able to take the exam during any 24 hours of the exam period. The exam will focus on questions relating the issues arising from the guest deals to the materials covered in the first half of the course.

5. Composition of Final Grade: 40% of the final grade will be based upon the exam. 40% will be based upon your team’s grade for its preview, its questions during the guest’s discussion with the class, and its analysis of the assigned deal. The remaining 20% will be based on your performance when “on-call” regarding a second deal, and your classroom performance throughout the semester.

Office hours:

My office hours will be Tuesdays from 2:00 to 4:00, or by appointment. Please e-mail my assistant, Danielle Scugoza for an appointment (either to reserve time during office hours or to schedule an appointment outside office hours).

My office is located in Suite 314H; my phone number is 8-6223; e-mail is vicki.been@nyu.edu My assistant, Danielle Scugoza, can be reached at 8-6713. She is located in Suite 314 and her e-mail is scugozad@juris.law.nyu.edu.
Problems or Questions:

If you have any questions or problems, don't be afraid to ask for clarification, review or reassurance. I also welcome any suggestions you may have about how I can make class more interesting or more tailored to your particular concerns. I also welcome suggestions about deals with which you are familiar that would be appropriate to feature in the course in future years.

I look forward to working with each of you.