

**TRANSACTIONAL CONSERVATION LAW: REAL ESTATE, FINANCE, AND TAXATION
FALL 2020 COMPRESSED COURSE SYLLABUS**

LAW 6930 Class 15304 (1 credit)

Thomas Kay, Esq.

act.tkay@gmail.com

Teaching Assistant: Melissa Hill, act.melissah@gmail.com

Room TBA

1. COURSE OBJECTIVES AND GOALS

This one-credit compressed course will enrich the College's offerings in the areas of real estate law and environmental and land use law, contributing to the newly expanded certificate in environmental, land use and real estate law. Through this course, students will gain a basic understanding of the real estate transaction process through the lens of transactions that work to conserve land.

2. STUDENT LEARNING OBJECTIVES

Students will learn to analyze practical real estate transactional issues as they arise in the context of land conservation. Students will be exposed to the interrelationships between real estate, taxation, estate planning and federal, state, and local regulation in the private land conservation process. Through skills exercises and field work, students will gain practical experience in some essential real estate lawyering skills such as title search, document drafting, negotiation and real estate regulation. Special consideration will be given to enhancing student capacity to learn and analyze property and trusts & estates related Florida bar examination topics.

3. REQUIRED COURSE MATERIALS

Students should read the assigned materials before each class and be prepared to discuss the assigned materials during class. Students should also read any supplemental materials distributed through the TWEN class webpage. Reading assignments may be changed or added.

Text: The Conservation Real Estate Law Course Packet will be made available online.

Supplemental Materials: This course will include supplemental materials accessible through the TWEN class webpage and students should review those materials as part of the preparation for each class.

4. METHOD OF EVALUATING STUDENTS AND DETERMINING GRADES

Final grades will be based on classroom participation (20%) and a final exam (80%).

Classroom Participation: Each student is expected to participate in class discussions and exercises. Students may be called on to answer questions. Voluntary participation is encouraged. Attendance will be taken at each class meeting.

Skills Exercises: At least, two skills exercises will be assigned. The skills exercises are considered part of classroom participation. Students are expected to come prepared to work through the skills exercises and will be called on to answer hypotheticals.

Field Trip: Students will participate in at least one field trip that will involve visiting a property that is in conservation and working with a local land trust to monitor the site for compliance and assessing for liability.

Final Exam: The final exam will cover topics from the lectures, guest lectures and all assigned readings. Students should expect short essay answer questions and full-length essay questions. The final exam will constitute 80% of the final grade.

Grades: Grades will be assigned based upon the standards required by the law school. The UF Frederic G. Levin College of Law grading policy is located at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>

Grading Scale: The following chart describes the specific letter grade/grade point equivalent.

Letter Grade	Grade Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

5. CLASS EXPECTATIONS

Preparation for Class: Students are expected to spend, on average, two (2) hours preparing for every one (1) hour of scheduled class time. Students are expected to complete drafting assignments and relevant readings prior to each class session. Reading assignments can be found through the course webpage on TWEN.

6. SCHEDULE OF TOPICS AND ASSIGNMENTS

Topic	Brief Description	Readings
Day 1: Introduction & Planning for Conservation Transactions		
Hour 1: - Introduction - Overview of real estate transactions - Introduction to specific topics of land Conservation (mitigation projects, intentional communities, and conservation easements)	Students will learn the fundamentals of real estate transactions and how land trusts work.	<u>Overview of Real Estate Transactions:</u> <u>Introduction to Specific Topics of Land Conservation:</u> - *The Trust for Public Land, <i>The Benefits of Land Conservation</i>
Hour 2: - Planning for land conservation - Financing land conservation - Determining the best course of action - Identifying the needs of the landowner	Students will be introduced to finance options, estate planning, and tax considerations.	<u>Planning for Land Conservation:</u> - Land Trust Alliance, <i>Conservation Options</i> <u>Financing Land Conservation: Identifying the Needs of the Landowner:</u> - Land Trust Alliance, <i>Getting Started</i> , section on "Questions to Consider" - Sample Landowner Questionnaire <u>Determining the Best Course of Action:</u> - Thomas M. Woiwode, <i>How Gifts of Real Property Can Benefit Serious Conservation</i> , pp. 11-13
Hour 3: - State, federal, and local regulations and programs for land conservation	Overview of regulations and programs for land conservation with a Florida focus. Students will learn about charitable tax deductions, conservation easements, and how governments and courts define perpetuity.	<u>Federal Regulations and Programs for Land Conservation:</u> - Rasband and Garrett, <i>A New Era in Public Land Policy: The Shift Toward Reacquisition of Land and Natural Resources</i> , pp. 1-35 <u>State and Local Regulations and Programs for Land Conservation:</u> - The Florida Bar Journal, <i>Conservation Easements, a Benefit to the Environment and the Landowner</i> <u>Direct Government Funding for Conservation Easements:</u> - Nancy A. McLaughlin, <i>An Introduction to Conservation Easements in the United States: A Simple Concept and a Complicated Mosaic of Law</i> , pp. 175-80
Day 2: Land Donation & The Land Transaction Process		
Hour 4: - Requesting land donation or planned giving - Accounting for land donation	Students will be introduced to the various financial implications associated with land donation.	<u>Requesting Land Donation or Planned Giving:</u> - Sample land donation request for land conservation project

<p>- Financial implications for the landowner</p>		<p><u>Financial Implications for the Landowner:</u> <i>Indirect Funding for Conservation/Tax Incentives;</i> <i>Federal Charitable Deduction:</i> - I.R.C. §§ 170(b)(1)(B), 170 (b)(1)(C), 170 (b)(1)(E), 170 (b)(1)(G), 170 (b)(2)(A), 170 (b)(2)(B), 170 (D)(ii), 170(f)(3), 170(f)(11), and 170(h) - 26 C.F.R. § 1.170A-14 - McLennan v. US, 24 Cl.Ct. 102 (1991), aff'd 994 F.2d 839 (C.A. Fed. 1993) <i>Estate Tax and Property Tax Benefits:</i> - 26 U.S.C. §§ 2051, 2055, and 2031 (a) & (c)</p>
<p><u>Hour 5:</u> - Title search - Due diligence - Deed execution (Warranty/Quit Claim) - Skills exercise: title search</p>	<p>Demonstration of basic title search. Students will learn fundamental concepts of due diligence and will learn about the deed execution process.</p>	<p><u>Title Search:</u> - Weinstein and Ness, <i>Implied and Constructive Notice: Title Search Fallibility and the Rigidity of the Constructive Notice Doctrine</i>, pp. 37-40</p> <p><u>Due Diligence:</u> - Gold and Gross, <i>Environmental Due Diligence in Real Estate Transactions</i>, pp. 47-55</p> <p><u>Deed Execution:</u> - 26A Corpus Juris Secundum <i>Deeds</i> §§ 60-70 (database updated September 2018)</p>
<p><u>Hour 6:</u> - Guest speaker</p>	<p>Local practitioner(s) will discuss the nuts & bolts of real estate law as it is practiced on a daily basis</p>	<p>TBD</p>
<p>Day 3: Conservation Easements, Federal Regulation, & Tax Implications</p>		
<p><u>Hour 7:</u> - Drafting the conservation easement - Allowable restrictions and exemptions</p>	<p>Overview of conservation easements—emergence of conservation easements, methods of creation, and benefits of using conservation easements as a tool for land conservation. Students will learn the fundamentals of drafting conservation easements and will learn about allowable restrictions and exemptions in Florida.</p>	<p><u>Overview of Conservation Easements:</u> - Jessica Owley, <i>The Emergence of Exacted Conservation Easements</i>, pp. 1084-1094</p> <p><u>Drafting the Conservation Easement:</u> - The Land Trust Alliance, <i>The Conservation Easement Handbook</i>, pp. ? (need copy of book)</p> <p><u>Allowable Restrictions and Exemptions:</u> - The Land Trust Alliance, <i>The Conservation Easement Handbook</i>, pp. ? (need copy of book) - Section 704.06, Florida Statutes (2018).</p>

<p><u>Hour 8:</u></p> <ul style="list-style-type: none"> - Federal regulation of land conservation (taxation) - Land conservation and taxation: charitable contributions, state and federal regulations, and other tax implications - Current issues in conservation easements: <ul style="list-style-type: none"> - Syndicated conservation easements - Amendments to conservation easements - Eminent domain and conservation easements 	<p>Students will study specific taxation issues related to land conservation, including the appraisal process, and will work through a taxation hypothetical. Students will also study different types of conservation easements and the issues related to amending and managing conservation easements.</p>	<p><u>Federal Regulations and Tax Incentives:</u></p> <ul style="list-style-type: none"> - Nancy A. McLaughlin, <i>An Introduction to Conservation Easements in the United States: A Simple Concept and a Complicated Mosaic of Law</i>, pp. 119-34 - Uniform Conservation Easement Act <p><u>Syndicated Conservation Easements:</u></p> <ul style="list-style-type: none"> - Timothy Lindstrom, <i>The Syndication of Conservation Easement Tax Deductions</i> <p><u>Amendments to Conservation Easements:</u></p> <ul style="list-style-type: none"> - Jessica E. Jay, <i>When Perpetual Is Not Forever: The Challenge of Changing Conditions, Amendment, and Termination of Perpetual Conservation Easements</i>, 5-43
<p><u>Hour 9:</u></p> <ul style="list-style-type: none"> - Drafting & executing the conservation easement - Planning for perpetuity 	<p>Students will learn how conservation easements are implemented and managed by land trusts.</p>	<p><u>Reviewing and Executing the Conservation Easement:</u></p> <ul style="list-style-type: none"> - LTA Standards and Practices Standard 9: Ensuring Sound Transactions <p><u>Planning for Perpetuity:</u></p> <ul style="list-style-type: none"> - Nancy McLaughlin, <i>Tax-Deductible Conservation Easements and the Essential Perpetuity Requirements</i>, pp. 9-45 - Glass v. Comm'r, 471 F.3d 698 (6th Cir. 2006) - Belk v. Comm'r, 774 F.3d 221 (4th Cir. 2014)
<p>Day 4: Field Trip & Professional Responsibility</p>		
<p><u>Hours 10 & 11:</u></p> <ul style="list-style-type: none"> - Professional responsibility in conservation real estate - Ethical considerations in conservation real estate and finance - Skills exercise: ethical considerations 	<p>Model Code as related to conservation and environmentalism. Students will learn about ethical issues relating to conservation real estate.</p>	<p><u>Professional Responsibility in Conservation Real Estate:</u></p> <ul style="list-style-type: none"> - Tom Lininger, <i>Green Ethics for Lawyers</i>, pp. 66-73 <p><u>Ethical Considerations in Conservation Real Estate and Finance:</u></p> <ul style="list-style-type: none"> - American Bar Association, Eds. Irma S. Russell & Vicki J. Wright, <i>Ethics and Environmental Practice: A Lawyer's Guide</i>, pp. ? (need copy of book) <p><u>Skills Exercise:</u></p> <ul style="list-style-type: none"> - Hypo for ethical considerations skills exercise

<p>Hours 12 – 14 - Field trip (location TBD) Nature Preserve Monitoring with Legal & Risk Liability Assessment</p>	<p>Students will visit a newly acquired property intended to become a nature preserve with passive public recreation access. Students will learn the basics of monitoring a preserve and assessing newly acquired lands for legal and risk liability.</p>	<p><u>Documenting and Protecting Biodiversity on Land Trust Projects: An Introduction and Practical Guide</u></p> <p><u>Guidance Document: Indicator Practice 12D. Monitoring Land Trust Properties</u></p> <p>Available at: <u>https://conservationtools.org/library_items/topic/126-Baseline-Documentation</u></p>
<p>Final Exam:</p>		

7. CLASS ATTENDANCE

Student requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at: <https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>

8. CLASSROOM DEMEANOR, COMPUTER USE, AND CELL PHONE USE

Student participation is encouraged. Students may use their computer during class for the limited purpose of taking class notes only. Students are requested to silence or turn off their cell phone and all other electronic devices prior to the start of class, and to not turn them on or use them during class.

9. OFFICE HOURS

Before and after class, as announced during class, and as set by appointment.

10. ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES

The University of Florida is committed to providing equal educational access to students with disabilities. Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the instructor when requesting accommodations. Students with disabilities should follow this procedure as early as possible in the semester. Please contact the Disability Resource Center at 352-392-8565 or at accessuf@dso.ufl.edu if you have any questions.

11. COURSE EVALUATIONS

Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary of the results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

12. HONOR POLICY

All UF students are bound by The Honor Pledge which states, "We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: "On my honor, I have neither given nor received unauthorized aid in doing this assignment. The Honor Code (<https://www.dso.ufl.edu/%20sccr/process/student-conduct-honor-code>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the professor.

13. CAMPUS RESOURCES

Contact the Counseling and Wellness Center at 352-392-1575 or <https://counseling.ufl.edu/>.

Contact the University Police Department at 352-392-1111 or <http://www.police.ufl.edu>.

Call 9-1-1 for emergencies.

14. ETC

This syllabus may be changed as the need arises.