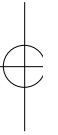


Basic Mortgage Law



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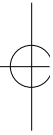
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Basic Mortgage Law

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David S. Hill



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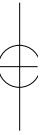
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To Jane, Michael and Jennifer





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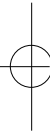
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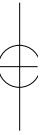


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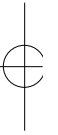
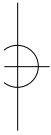
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Preface

It takes but a moment's reflection to recognize the importance of the subject matter of this casebook. Step outside and look around you. The vast majority of all privately owned real property in the United States is acquired through the use of borrowed money. These loans have almost invariably been secured by a mortgage of the real estate, or a device similar to the mortgage. The concept of conveying an interest in land to secure an indebtedness is a simple one, which, upon application, turns out to be fairly complex. There are a number of reasons for this complexity. The real estate transaction may itself be complicated, e.g., the development of a shopping center. The complexity may also arise from the law applicable to the transaction. For example, one of the principal difficulties of a mortgage loan arises from the fact that the mortgage secures a note. There is a tension between commercial law, which governs negotiable notes and promotes the desirability of their free flow in commerce, and property law, which governs the mortgage and seeks stability and certainty of title. When mortgage loans are "securitized", the complexity and number of legal issues is greatly expanded. Regardless of its complexity, at the heart of every real estate transaction is the mortgage, or a device substituted for it. That is the subject matter of this casebook.

This casebook contains a set of traditional mortgage law materials drawn from state and federal cases, statutes, and a few secondary sources and law review articles. It is designed for a three-hour course in basic mortgage law. In some ways it is a step back in time; i.e., it is a traditional doctrinal casebook, devoid of trendy philosophical biases. There is no law and economics perspective, nor post-modernist view, etc. Just the basics. A number of "older" cases have been used. They have been used because they are as relevant today as when handed down, and they tend to be better written and reasoned than their more contemporary counterparts.

Although each of the salient issues in basic mortgage law is addressed, the casebook is brief, and that is reflected in the relatively small number of cases used and the brevity of the notes following them. My hope is that the notes and questions will spark the interest of the students and encourage them to look to resources outside of the casebook to expand their knowledge. It is an attempt to emphasize a fact that every student should know: the practice of law is a life-long learning process, and most of what is learned must be self-taught. The brevity of the notes also gives the professor the flexibility to flesh out the course content in the manner in which he or she deems most appropriate. The casebook is simply the skeleton around which the course is constructed.

I have used most of these materials for a number of years and they have proved to be very satisfactory for the purposes for which they have been assembled. I hope that those who adopt this casebook will have the same satisfying experience I have enjoyed.

I am indebted to my research assistant, Steven Fox, for the valuable editing and research assistance he has provided in the preparation of this manuscript. Any errors, of course, are mine.

David S. Hill

Boulder, Colorado
July, 2000



Basic Mortgage Law

